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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-651

UNITED BROADCASTING COMPANY, INC., *Petitioner,*

v.

FEDERAL COMMUNICATIONS COMMISSION, *et al.,*
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner United Broadcasting Company, Inc. ("United") requests that this Court issue a writ of certiorari to review a judgment of the United States Court of Appeals for the District of Columbia Circuit entered in this case.

OPINIONS BELOW

The decision of the Court of Appeals, which is reported at —— U.S. App. D.C. ——, —— F.2d ——, appears at Appendix A to this Petition.[1] The decision

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[1] The appendices are separately bound in a companion volume, which is cited as "Pet. App." In addition, references to "J.A."

of the Federal Communications Commission ("the FCC"), which is reported at 55 FCC 2d 416, appears at Appendix B. The FCC's denial of United's Petition for Reconsideration and Rehearing, which is reported at 59 FCC 2d 663, appears at Appendix C. The Initial Decision of the Administrative Law Judge ("the ALJ"), which was affirmed in part and modified in part by the Commission and which is reported at 55 FCC 2d 431, appears at Appendix D.

JURISDICTION

The judgment of the Court of Appeals, which appears at Appendix E, was entered on July 8, 1977. A timely filed Petition for Rehearing and/or Suggestion for Rehearing *En Banc* was denied on August 8, 1977, by separate orders which appear at Appendix F and Appendix G, respectively. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

In the FCC decision affirmed by the Court of Appeals, the FCC engaged in extended discussion of standards applicable to the broadcast of religious programming, and, concluding that United had failed to meet the standards described, found that denial of United's application for renewal of license was warranted. In the same decision, the FCC held that, without regard to the religious programming questions, denial of the United renewal application was warranted

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are to the Joint Appendix in the lower court, containing pertinent FCC documents, hearing exhibits, hearing transcript excerpts and pleadings. A copy of the Joint Appendix, together with the rest of the record in the lower court, will be lodged with the Clerk of this Court.

on the independent ground that United had violated a number of the FCC's technical rules pertaining to the operation of broadcast stations. The Court of Appeals affirmed the FCC decision on this latter ground alone, without even referring to the religious broadcast questions discussed at length by the Commission. The question presented is:

> Whether the lower court erred in affirming the FCC's denial of a license renewal application, where the lower court failed to inquire beyond the FCC's mere assertion that certain technical factors warranted disqualification, and where that failure in effect insulated from judicial review the FCC's unconstitutional infringement of First Amendment rights respecting the broadcast of religious programming.

STATUTES INVOLVED

The First Amendment to the Constitution of the United States of America provides in relevant part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .

Section 326 of the Communications Act of 1934, as amended, 47 U.S.C. § 326, provides:

> Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.

STATEMENT OF THE CASE

This case involves a challenge, on constitutional grounds, to the denial by the FCC of United's application for renewal of the license of Station WOOK, Washington, D.C.[2] The basic hearing issues on which United's application was tried are as follows:

(1) To determine whether the broadcast by Station WOOK of announcements which advertised articles such as "Conquer Roots", "Money-Drawing Roots", and "Spiritual Baths", or which offered to give three-digit scripture references to be used for "financial blessings", constituted false, misleading or deceptive advertisements.

(2) To determine whether the United Broadcasting Company, Inc. has taken reasonable measures to protect its listening public from false, misleading or deceptive advertising over its facilities.

(3) To determine whether Station WOOK has broadcast announcements or information concerning a lottery in contravention of Section 1304 of Title 18 of the United States Code, and of § 73.122 of the Commission's Rules.

(4) To determine all of the facts and circumstances surrounding the operation of Station WOOK at Washington, D.C., under the management of United Broadcasting Company, Inc., with particular respect to the alleged departures from Commission Rules and Regulations and license authorization as disclosed by the Official Notice of Violation issued to the licensee in October, 1969, the responses thereto and related documents.

(5) To determine whether, in light of the evidence adduced pursuant to [the issue quoted immediately above], United Broadcasting Company, Inc., in the operation of Station WOOK, engaged in conduct which reflects such negligence, carelessness, ineptness or disregard of the Commission's processes that the Commission cannot rely upon the licensee to fulfill the duties and responsibilities of a licensee.[3]

After extensive hearings, the Administrative Law Judge ("the ALJ") found that United was qualified to remain a licensee of the FCC. However, because of the adverse effect of United's technical violations, the ALJ recommended denial of United's application on comparative grounds and grant of the competing application of Washington Community Broadcasting Co. ("Community"), the Intervenor below. 55 FCC 2d 431, Pet. App. D.

A substantial portion of the ALJ's Initial Decision related to the religious programming of Station WOOK. *See* Pet. App. D 9-49; 134-141. The overall programming of the station was black-oriented, and the religious programming in particular was directed to black listeners. The ALJ found that as many as 13 or more hours of such religious programming was regularly scheduled and broadcast on Station WOOK on

[2] Although the United renewal application was designated for hearing with other applications, one of which requested the same facilities as Station WOOK, the FCC's decision refusing to renew the WOOK license was based on absolute grounds of disqualification. The question of United's comparative qualifications relative to those of the other applicant is not present in this case.

[3] There were, in addition, issues concerning the extent of United's efforts to ascertain the needs and interests of the Station WOOK service area, and the meritorious nature of Station WOOK's programming. These issues are not relevant to this Petition.

Sundays, much of this consisting of individual ministers offering sermons. Pet. App. D 9. The religious programming of the station was under the supervision of Mr. Otis Von Blasingame, marketing and promotion manager at Station WOOK, Mr. E. Carlton Myers, general manager of Station WOOK, and Mr. Richard Eaton, the owner of United. Pet. App. D 9-10. The FCC, in its review of the Initial Decision, concluded that Mr. Von Blasingame, the son of a black minister, was familiar with the black community and black religious needs. Pet. App. B 9, n. 16. Either he, Mr. Myers or Mr. Eaton reviewed the qualifications of the ministers who appeared in order to assure themselves of the ministers' acceptability. Pet. App. D 9-10.[4]

During the sermons offered by the ministers, items such as roots and spiritual baths were advertised. The ALJ found that United discouraged advertisements of such products. Pet. App. D 36. However, he also noted that such announcements were not prohibited if it was believed that the articles were viewed by the ministers as instruments of God rather than as inherently capable of working benefits. Pet. App. D 36-37. According to the ALJ, this non-censorship policy arose from the licensee's sensitivity to and concern for First Amendment principles as they relate to religious matter. Pet. App. D 37.

In addition to his findings relative to Station WOOK's religious programming, the ALJ made ex-

[4] Testimony of Mr. Von Blasingame indicated that the *bona fides* of the ministers were established by inquiries concerning their ordination, their right to perform various sacraments, including marriage, or their association with ministers known to Mr. Von Blasingame. In the case of some non-resident ministers, respected ministers in their home cities were consulted. J.A. 634, 636, 638-642.

tensive findings with respect to the allegations of technical violations. A total of 19 violations were initially charged. Of these, the ALJ found that four of the alleged violations had been cleared, five had not been established by the FCC, and one could not have existed because there was no FCC rule on the subject that could have been violated. In addition, the ALJ found that no reliance could be placed on the FCC's measurements which underlay two other alleged violations.[5]

Thus, of a total of 19 charged violations, only seven were established before the ALJ.[6] These seven related to various measurement and logging requirements. The ALJ found that the limited technical violations, viewed in the context of United's previous technical violations, indicated that United had been careless and negligent in its operation of Station WOOK. Pet. App. D 152. The ALJ nonetheless concluded that these technical matters were "not of such degree . . . as to warrant absolute disqualification" of United. *Id.* The ALJ did add, however, that the overall effect of the technical violations[7] was sufficient to disqualify United, *on a*

[5] The ALJ concluded that no reliance could be placed on the FCC measurements which formed the basis for two of the violations. Pet. App. D 145. Both of these involved allegations of repeated conduct by United. However, only one of the 22 alleged incidents was established by testimony relative to charged violation 18, and only two of nine were so established relative to charged violation 19.

[6] Of the seven established violations, two involved meter readings. *See* paragraphs 98-103 of the Initial Decision. Pet. App. D 63-67. However, since the FCC failed to take into account meter tolerances for the measurements recorded, the effect of these two violations must be discounted. *See United States* v. *Rust Communications Group, Inc.*, 425 F. Supp. 1029 (E.D. Va. 1976).

[7] With respect to the religious programming issues, the ALJ concluded that the licensee had not broadcast lottery information in

comparative basis only, relative to the Community application. Accordingly, the ALJ denied the United application for renewal and granted Community's competing application.

On appeal to the full FCC, the ALJ's decision denying the United application was affirmed. However, with respect to the ALJ's specific conclusions relative to the religious programming issues,[8] the FCC reversed the ALJ and found that, by permitting the broadcast of numbers information on Station WOOK, United had violated the federal law prohibiting the broadcast of information concerning lotteries,[9] and that that violation alone mandated denial of the renewal application. Pet. App. B 4-6, 8-13.[10] In addition, the FCC held that United failed to take reasonable measures to protect its listeners from false, misleading and deceptive advertisements such as those for roots and sacrificial baths, and that this failure, also, man-

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violation of 18 U.S.C. § 1304 or § 73.122 of the FCC's Rules. Pet. App. D 141. Further, the ALJ concluded that United had taken reasonable precautions relative to the advertisement of roots, spiritual baths and the like. However, the ALJ concluded that the broadcasts offering three-digit scripture references to be used for financial blessings were false, misleading and deceptive, that they constituted an improper use of the station, and that United had not taken any effective steps to prevent such use. These conclusions did *not,* however, enter into the ALJ's decision to assess even a "comparative disqualification" against United. Pet. App. D 152.

[8] See note 7, *supra.*

[9] 18 U.S.C. § 1304.

[10] United continues to contend that the ALJ's determination concerning the broadcast of lottery information was correct. The correctness *vel non* of the ALJ's decision on this point is not relevant to this Petition, however, since the lower court declined to reach that issue.

dated denial of the renewal application. Pet. App. B 14-15.

In reversing the ALJ on these points, the FCC specifically rejected United's argument that, in order to hold United responsible for the allegedly fraudulent content of the programs, the FCC would have to involve itself in an unconstitutional inquiry into the truth or falsity of the religious programs themselves. Summing up its response to this argument, the FCC stated

> In view of the facts that numbers references are not part of any religious creed, that the representations of the ministers concerning financial blessings *defy belief* [footnote omitted], and that United failed to show that the ministers had enabled their listeners to receive financial blessings or that the ministers *honestly believed* they could help their listeners get financial rewards by playing the numbers which they furnished [footnote omitted], we conclude that our action here does not violate the constitutional restraints of the First Amendment. [Emphasis added]

Pet. App. B 7-8. Having said that, the FCC proceeded to scrutinize in great detail the religious programming of Station WOOK and United's position relative to that programming.

The FCC's analysis of the religious programming issue comprised 13 of the opinion's 14 paragraphs devoted to a discussion of United's application. The remaining paragraph recited the general history of United's technical difficulties. This last paragraph, without any indication of the basis of the FCC's disagreement with the ALJ's conclusions, and without

even a cursory discussion or description of the nature, number or extent of the specific violations established,[11] concluded that the United application must be denied "on the basis of [United's] violations of the technical rules standing alone." Pet. App. B 17.

On appeal to the United States Court of Appeals for the District of Columbia Circuit, the FCC was affirmed solely on the basis of this last holding with respect to the disqualifying effect of the technical violations.[12] The lower court, in its one paragraph *per curiam* opinion, declined to reach the significant question raised by United concerning the constitutionality of the FCC's actions relative to United's religious programming. United's Petition for Rehearing and/or Suggestion for Rehearing *En Banc,* which sought to raise the constitutional questions discussed below, was similarly summarily rejected.

REASONS FOR GRANTING THE WRIT

This case warrants review in this Court because to leave the constitutional aspects of the FCC's decision undisturbed would be to sanction an indirect regulation of the truth of religious programming, a subject the FCC is prohibited by the Constitution and Section

[11] The FCC did affirm, with limited modifications, the ALJ's findings relative to the technical issues. The modifications, which consisted of rulings on several Broadcast Bureau exceptions, did not increase the number of adverse findings. Thus, while the FCC's single paragraph affirmance of the technical issue findings makes only general reference to the fact that 19 violations were originally charged, the record continues to reflect only seven established violations. See text, *supra,* at 7.

[12] The jurisdiction of the lower court was based upon Section 402(b) of the Communications Act, 47 U.S.C. § 402(b).

326 of the Communications Act from regulating directly.[13] The decision of the lower court reflects an

> apparent unwillingness to look at the reality of the relationship between the Commission and the licensees in favor of a circumspect examination of specific incidents of regulatory activity.

Illinois Citizens Committee For Broadcasting v. *FCC,* 169 U.S. App. D.C. 166, 194, 515 F.2d 397, 425 (1974) (Bazelon, C.J., statement on why he voted to rehear the case *en banc*). *See also Brandywine-Main Line Radio, Inc.* v. *FCC,* 153 U.S. App. D.C. 305, 366 and n. 60, 473 F.2d 16, 77 and n. 60 (1972) (Bazelon, C.J., dissenting) (regulation by the "lifted eyebrow"); *Writers Guild of America, West, Inc.* v. *FCC,* 423 F. Supp. 1064, 1147-51 (C.D. Cal. 1976) (regulation by threat of regulation); Note, "Regulation of Program Content by the FCC", 77 Harv. L. Rev. 701, 703 (1964). Because of the FCC's position relative to its licensees, Commission statements which appear to set policies or guidelines can have a substantial effect on

[13] *See Illinois Citizens Committee For Broadcasting* v. *FCC,* 169 U.S. App. D.C. 166, 176 and n. 1, 515 F.2d 397, 407 and n. 1 (1974) (Bazelon, C.J., statement on why he voted to rehear the case *en banc*):

> The heart of the case lies in the realities of the relationship between the Federal Communications Commission and radio licensees. . . . The main threat is, of course, that the government can put a licensee out of business but I suppose that the more pervasive threat lies in the *sub rosa* bureaucratic hassling which the Commission can impose on the licensee. . . . For better or worse, a licensee confronted with the choice between an economic disadvantage and pleasing the government through curtailment of a constitutional right will generally choose curtailment. Thus, licensee political or artistic [or in this case, religious] expression is particularly vulnerable to the "raised eyebrow" of the FCC; faced with the threat of economic injury, the licensee will choose in many cases to avoid controversial speech in order to forestall that injury.

the policies of the licensed broadcasters regardless of the context of the FCC's statements. The instant situation is a case in point. The effect of the FCC's decision and the lower court's affirmance of that decision is to put all broadcasters on notice that they will be subject to the religious broadcast standards set forth in the FCC's decision. It does not matter that those standards impose an unconstitutional burden on broadcasters, nor does it matter that the standards were set out with respect to only one licensee. Broadcasters, unwilling or unable to risk a threat to their licenses, will accept and abide by the FCC's standards.

The crucial reason for granting the writ in this case is that the FCC has succeeded, intentionally or otherwise, in insulating its unconstitutional religious broadcasting statements from judicial review. This result arises from the FCC's finding that the technical violations alone were sufficient to warrant denial of United's renewal application. The lower court, apparently deferring to the agency's expertise in technical matters, affirmed on that ground alone. In this case, however, it is readily apparent that the technical violations involved were in fact not of a disqualifying nature. The ALJ in a detailed opinion expressly so found, and the FCC, in its one paragraph reversal of that finding, offered no basis for its disagreement with the ALJ. Thus, by engaging in extended discussion of religious broadcasting, and by conclusorily articulating an independent "technical" ground for its action, the FCC has effected, and simultaneously precluded judicial review of, unconstitutional regulation which will chill the conduct of broadcasters. An agency must not be permitted to foreclose judicial review of its decisions in this fashion. Important constitutional questions can-

not be insulated from review by the mere assertion of "technical" factors. Review by this Court is appropriate in order to provide lower courts with standards of review with which to analyze and resolve the recurring question raised by situations such as the present one, where unconstitutional action has been permitted to stand as a result of judicial deference to "technical" agency expertise.

I. The FCC's Action, Left Undisturbed By The Lower Court, Represents An Unconstitutional Infringement Affecting The Entire Broadcasting Industry.

The FCC mandated, and the lower court left undisturbed, the impossible and unconstitutional requirement that licensees, to protect themselves from disqualifying charges of fraudulent and deceptive practices, be able to establish that claims made in religious broadcasts are true, that spiritual teachings, if followed, will produce the promised result. Pet. App. B 14-15. The FCC already had concluded that the representations of the ministers whose sermons were broadcast on Station WOOK "defy belief",[14] apparently forgetting that, under the First Amendment, "[m]en may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs." *United States* v. *Ballard*, 322 U.S. 78, 86 (1944).[15] Moreover,

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[14] Pet. App. B 7.

[15] Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. *Board of Education* v. *Barnette*, 319 U.S. 624. It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet

"[r]eligious beliefs are not required to be consistent, or logical, or acceptable to others." *Stevens* v. *Berger,* 428 F. Supp. 896, 899 (E.D. N.Y. 1977), citing *United States* v. *Ballard, supra* at 86; *Cantwell* v. *Connecticut,* 310 U.S. 296, 303 (1940).

The courts have held that only the most limited inquiry is permissible into religious beliefs to determine whether those beliefs are entitled to constitutional protection under the First Amendment. *See generally Wisconsin* v. *Yoder,* 406 U.S. 205, 215 and n. 6 (1972); *United States* v. *Ballard, supra* at 86-87; *Cantwell* v. *Connecticut, supra* at 307, 310; *Teterud* v. *Burns,* 522 F.2d 357, 360 (8th Cir. 1975); *Stevens* v. *Berger, supra* at 899. Such inquiry at most can be directed only to finding that the beliefs are religious in nature and to finding that those religious beliefs are sincerely held. The inquiry must never attempt to establish the absolute truth or falsity of those religious beliefs.

> A religious belief can appear to every other member of the human race preposterous, yet merit the protections of the Bill of Rights. Popularity, *as well as verity,* are inappropriate criteria.

Stevens v. *Berger, supra* at 899 (emphasis added). It is this impermissible element of truth that renders the FCC's decision unconstitutional.

The Court should consider also the context within which this unconstitutional burden to prove the truth of religious programming has been imposed on licensees, namely in a license renewal proceeding. It is

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the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law.

United States v. *Ballard,* 322 U.S. 78, 86-87 (1944).

well established that when a First Amendment issue is presented in a case, it is the government's burden to defend the regulation impacting on protected religious beliefs, *Wisconsin* v. *Yoder, supra* at 215-16; *Sherbert* v. *Verner,* 374 U.S. 398 (1963), and the presumption is that the regulation is invalid. In a renewal proceeding, the burden of proving that renewal is in the public interest is on the licensee, and, under the FCC's decision left standing by the lower court in the instant case, a licensee accused by the FCC of broadcasting religious programming that defies the FCC's belief must be able to prove that the programming was absolutely truthful.

The chilling effect on the exercise of First Amendment rights of forcing the citizen to prove his speech is protected has been held to be unconstitutional in other factual settings. *See e.g., Freedman* v. *Maryland,* 380 U.S. 51, 58 (1965) (state film censorship board must bear burden of proving material is obscene); *Speiser* v. *Randall,* 357 U.S. 513, 526 (1958) (state cannot place burden on taxpayer to prove that he is not a criminal syndicalist as a condition of qualifying for a tax exemption). The FCC's unconstitutional shifting of its burden to licensees further underscores the significance of the fact that, to effect this shifting, the FCC has used an indirect method which will not be subject to judicial review.

United did all that the FCC could constitutionally require licensees to do regarding religious programming, and it was nonetheless penalized for its religious programming. Further, all other broadcast licensees are also being penalized in that they are now subject to the chilling effect of the unconstitutional standards

adopted by the FCC relative to religious programming. The public importance of these factors warrants review by this Court of the affirmance by the court below of the FCC's decision.

II. The Violation Of Certain Technical Rules Of The FCC Was Not An "Independent" Reason For United's Disqualification And Cannot, Standing Alone, Support The FCC's Denial Of The United Application.

The lower court held that United's "breach of the Commission's rules of technical operation" was an "independent reason" for United's disqualification as a licensee, and the lower court affirmed the FCC "on the basis of its discussion of this issue." Pet. App. A. However, the violations issue was not in fact independent of the FCC's unconstitutional inquiry into the truth of the content of United's religious programming. Moreover, the FCC gave such little consideration to this violations issue that there is no "discussion of [it]"[16] on which the lower court's opinion can validly rest.

The overriding concern of the FCC with respect to United's renewal application was the content of United's religious programming, and the nub of the case consisted of an evaluation of that programming rather than of the technical rules violations charged to United. This point is evidenced in the extended discussion of the religious programming content both by the ALJ and by the FCC.

It was only in one brief paragraph of an eleven page decision that the FCC concluded that the violations of the technical rules "standing alone" would justify

[16] Pet. App. A 2.

denying United's renewal application. 55 FCC 2d 416, 424 (¶ 16), Pet. App. B 16-17. In contrast, the FCC emphasized United's religious programming throughout the decision; it is clear that its emphasis improperly influenced the FCC's decision to disqualify United as a licensee. For example, because of United's religious programming, to which the FCC failed to accord the requisite constitutional protection, the FCC concluded United failed to provide "responsible supervision over program content." 55 FCC 2d at 418-19, Pet. App. B 6. In addition, the FCC decided that United permitted an "improper use of its facilities" in broadcasting the religious programming involved in this case. 55 FCC 2d at 420, Pet. App. B 9. It is obvious that the FCC then concluded that when such an "irresponsible" licensee also is charged with technical rules violations that licensee ought to be disqualified. The FCC has not shown, nor can it show, how disqualification is justified in this case when the improper religious inquiry effects have been removed and the technical rules violations stand alone.

There was no discussion by the FCC of the *established* violations[17] in light of the FCC precedent that in order to be disqualifying, violations must be of such a number, nature, and extent that the public is deprived of service. *See Heart of the Black Hills Stations,* 32 FCC 2d 196 (1971), *aff'd,* No. 72-1804 (D.C. Cir., February 26, 1973) (violations resulted in a nonviewable picture); *Charles C Carlson,* 12 FCC 902 (1948), *aff'd per curiam sub nom. Carlson* v. *FCC,* 84

[17] In asserting that the technical rules violations would, "standing alone", disqualify United as a licensee, the FCC referred to the number of violations *charged* against United rather than the number *established*. See pp. 7-10, 11-12, and note 14, *supra*.

U.S. App. D.C. 415, 172 F.2d 766, *cert. denied,* 337 U.S. 930 (1949) (numerous violations included excessive frequency deviation and spurious radiation); *Brooklyn Broadcasting Co.,* 4 FCC 521 (1937) (station was unable to broadcast at the time authorized by its license). The violations established against United fell far short of these serious, service-depriving violations. Nor were the violations in any way "willful" so to warrant the disqualification punishment. *The Court House Broadcasting Co.,* 21 FCC 2d 792 (1970). Indeed the ALJ who heard all the evidence in the case concluded that United was in fact basically qualified to remain a licensee so far as technical matters were concerned.

There were only seven violations established,[18] and they related to measurement and logging requirements and were *not* of a nature characterized as "more serious" in *Charles C. Carlson, supra.* The violations specifically involved making equipment performance measurements, recording results of the daily observation of tower lights (there was no indication the lights were not on), a delay in producing the maintenance logs for the FCC's inspector, failure on two occasions to notify the engineer in charge of a reduced power condition, and "writing over" instead of "lining-through" 234 log entries—a mere .96% of the 30,240 entries made. Not one of these violations had any effect whatsoever on other stations or on the licensee's direct service to the public. It is clear from the nature of these violations that the FCC's disqualification order could not "stand alone" on these violations but was instead primarily based on United's religious programming.

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[18] See pp. 7-10, above.

The few established technical rules violations, when considered without the improper conclusions about United's religious programming, are not alone a legally sufficient or independent ground to disqualify United as a licensee. It is apparent from this record that more, namely the content of United's religious programming, was involved in the FCC's disqualification order, and that such a departure from the accepted and usual course of procedure warrants review by this Court.

III. Agencies Must Not Be Permitted To Use Assertedly Independent Technical Grounds To Shield Important Constitutional Questions From Judicial Review.

A licensee's vulnerability is especially acute when violations of minor technical rules can be used by the FCC as a pretext for the exercise of control over the content of religious programming. This is precisely what has happened in the instant case—while relying, however conclusorily, on the assertedly "independent" technical violations ground for disqualification, the FCC proceeded to articulate unconstitutional standards relative to religious programming. These standards, while developed in a particular adjudicatory proceeding, are quite obviously applicable to all broadcast licensees. The result of this indirect regulation, of course, is that no licensee is likely to risk using religious programming material unless it conforms to an orthodoxy which can be expected not to defy the FCC's own belief. This dangerous result is made all the more ominous by the fact that, unless the requested writ is granted, the unconstitutional regulation will completely escape judicial review, and its chilling effect will continue unabated.

Judges in a number of lower courts have demonstrated concern for the problem created by agencies seeking to accomplish impermissible ends through some form of regulation by "raised eyebrow", that is, regulation which is insulated from effective judicial review. *See Brandywine-Main Line Radio, Inc.* v. *FCC,* 153 U.S. App. D.C. 305, 473 F.2d 16 (1972), *cert. denied,* 412 U.S. 922 (1973) (Bazelon, C.J., dissenting); *Robinson* v. *FCC,* 118 U.S. App. D.C. 144, 334 F.2d 534, *cert. denied,* 379 U.S. 843 (1964) (Wright, J., concurring in the denial of rehearing); *Writers Guild of America, West, Inc.* v. *FCC, supra.* However, with the exception of the *Writers Guild* case, no case has presented a set of circumstances so egregious as to warrant full judicial inquiry into the action.

Both the *Brandywine-Main Line* case, *supra,* and the *Robinson* case, *supra,* involved the denial of broadcast licenses. The FCC's opinions in both cases affected the First Amendment rights of broadcasters generally. However, the FCC in each case also found that misrepresentations made to it by the licensee warranted denial of the license independently of any inquiry into the licensee's programming policies. *See Brandywine-Main Line Radio, Inc.,* 24 FCC 2d 18 (1970), *reconsideration denied,* 27 FCC 2d 565 (1971), *aff'd sub nom. Brandywine-Main Line Radio, Inc.* v. *FCC, supra; Palmetto Broadcasting Co.,* 33 FCC 250 (1962), *reconsideration denied,* 34 FCC 101 (1963), *aff'd sub nom. Robinson* v. *FCC, supra.* The FCC was affirmed in both cases on the basis of this independent, nonconstitutional ground. Even so, members of the affirming courts noted the potentially serious problem inherent in those affirmances, i.e., that, regardless of the narrowness of the court's action, affirmance on an independent, non-constitutional ground could let stand unconstitutional intrusions into First Amendment rights.

Such a situation confronts this Court in the instant case. Moreover, there are two crucial distinctions between this case and the *Brandywine-Main Line* and *Robinson* situations which support the issuance of the requested writ in this case.[19]

First, in both *Brandywine-Main Line* and *Robinson,* the FCC's opinion provided the reviewing court with a detailed analysis of the facts and circumstances surrounding the misrepresentations involved. *See Brandywine-Main Line Radio, Inc.* v. *FCC, supra* at 351, 473 F.2d at 62 ("The [Commission's] opinion is complete, thorough, thoughtful and carefully based on the law. The sanction imposed by the Commission is fully supported by the record."). Thus, the reviewing court was able to assure itself that the FCC's action had substantial basis in the record. In the instant case, the FCC's terse paragraph reversing the ALJ's conclusions with respect to the effect of the technical violations is no more than conclusory, providing the reviewing court with virtually no analysis whatsoever of the FCC's reasoning.

Second, the independent ground of misrepresentation relied on in *Brandywine-Main Line* and *Robinson* is of a far greater seriousness than are the relatively

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[19] United does not concede that the Courts of Appeals in *Brandywine-Main Line* and *Robinson* were correct in failing to consider and dispose of the constitutional issues confronting them. In any event, as outlined above, the present case provides a far more compelling basis for full judicial review than either *Brandywine-Main Line* or *Robinson.*

minor technical violations involved in this case. It is generally accepted that the integrity of the entire regulatory process depends on an agency's ability to rely on the representations of its licensees. *See FCC* v. *WOKO,* 329 U.S. 223 (1946). Thus, established misrepresentations such as those in *Brandywine-Main Line* and *Robinson* constitute a grave threat to the regulatory process and must be dealt with severely. The same severity cannot attach to the rule violations here in question. Those rules are mere minor elements of the very broad technical regulatory structure devised by the FCC. Their violation is customarily treated by the FCC as grounds for reprimand or civil forfeiture, not revocation or denial of license. Their violation certainly does not pose any serious threat to the FCC's ability to regulate. Accordingly, the FCC should not be permitted to foreclose judicial review by reliance on these technical violations, thereby letting stand clearly unconstitutional action.

It is United's position that, when a reviewing court is presented with apparently unconstitutional agency action in support of which an independent, non-constitutional ground is advanced, the court must scrutinize closely that assertedly independent ground. In particular, the reviewing court should examine the nature of the ground, in order to determine whether it is of such legitimate importance that constitutional questions may properly be left unreviewed. In addition, the reviewing court should examine the agency's treatment of the ground, in order to assure itself that the ground was supported by substantial evidence, and was not, in fact, an unsupported ground shielding even constitutional aspects of the agency's action from effective review.

In the instant case, the nature of the independent, technical ground relied upon by the FCC is insubstantial, and discussion by the FCC of that ground is almost non-existent. Further, in the instant case it is clear that the effect of the agency's action will be to curtail or eliminate the broadcast of religious programming as a direct result of the chilling effect the action will have on the broadcasting industry. It is equally clear that, unless the requested writ is granted judicial review of that action will be precluded through the pretextual "independent" technical ground. When confronted by such circumstances, a reviewing court should carefully analyze the agency's assertions, in order to assure itself that the agency is not simply creating a situation whereby unconstitutional regulation will be permitted to pass unchallenged. The lower court, in its one paragraph affirmance of the FCC's decision, failed to analyze this question at all.

To permit the FCC's action in the instant case, along with its accompanying, industry-wide chilling effect, to stand because of the asserted existence of an "independent" basis for affirmance would improperly elevate notions of judicial deference to agency expertise far above the guarantees of the Constitution. Certiorari is justified in this case in order to defeat the FCC's particular circumvention of the clear prohibitions of the First Amendment. Certiorari is further justified in order to permit this Court the opportunity to formulate standards with which lower courts may analyze ostensibly legitimate agency conduct which in fact masks unconstitutional regulation.

CONCLUSION

For the reasons stated, the petition for certiorari should be granted.

Respectfully submitted,

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November, 1977

Supreme Court, U. S.
FILED
NOV 4 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-651

UNITED BROADCASTING COMPANY, INC., *Petitioner,*

v.

FEDERAL COMMUNICATIONS COMMISSION, *et al.,*
Respondents

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 76-1570

UNITED BROADCASTING COMPANY, INC., *Appellant*

v.

FEDERAL COMMUNICATIONS COMMISSION, *Appellee*
WASHINGTON COMMUNITY BROADCASTING CO., *Intervenor*

Appeal from an Order of the
Federal Communications Commission

Argued June 14, 1977

Decided July 8, 1977

Peter Tannenwald for appellant. *E. Stratford Smith, Vincent A. Pepper, David C. Jatlow, Thomas Schattenfield* and *David Tillotson* were on the brief, for appellant. *Harry M. Plotkin, Theodore D. Frank* and *Eric L. Bernthal* also entered appearances for appellant.

C. Grey Pash, Jr., Counsel, Federal Communications Commission, with whom *Werner K. Hartenberger*, General Counsel, and *Daniel M. Armstrong*, Associate General Counsel, Federal Communications Commission, were on the brief, for appellee. *Sheldon M. Guttmann*, Counsel, Federal Communications Commission, also entered an appearance for appellee.

Monroe Oppenheimer for intervenor.

Before: BAZELON, *Chief Judge*, and ROBINSON, *Circuit Judge*, and RONALD N. DAVIES,* *United States Senior District Judge* for the District of North Dakota.

Opinion Per Curiam.

PER CURIAM: The only substantial issue is whether the Commission's decision to refuse renewal to petitioner was a proper one. The Commission's *Order, United Television Co., Inc.*, 55 F.C.C.2d 416, 422, 423, 425 (1975), states that each of several independent reasons called for appellant's disqualification, including breach of the Commission's rules of technical operation. In our view, the long history of persistent violations of those rules was a sufficient reason for disqualification. The Commission's decision is therefore affirmed on the basis of its discussion of this issue, and we reach no other question tendered by this appeal.

* Sitting by designation pursuant to Title 28, U.S.C. § 294(d).

APPENDIX B

FCC 75-1018

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In Re Applications of

UNITED TELEVISION CO., INC. (WFAN-TV)[1]
Docket No. 18559
File No. BRCT-585
WASHINGTON, D.C.
For Renewal of License

UNITED TELEVISION CO., INC. (WFAN-TV)[1]
Docket No. 18561
File No. BPCT-3917
WASHINGTON, D.C
For Construction Permit

UNITED BROADCASTING CO., INC., (WOOK),
Docket No. 18562
File No. BR-1104
WASHINGTON, D.C.
For Renewal of License

WASHINGTON COMMUNITY BROADCASTING CO.,
Docket No. 18563
File No. BP-17416
WASHINGTON, D.C.
For Construction Permit for New
Standard Broadcast Station

[1] The applications of United Television Co., Inc. for renewal and modification of its license for WFAN-TV, Washington, D.C., were dismissed upon revocation of the license by the Commission, 46 FCC 2d 698, released April 26, 1974, affirmed, C.A.D.C., Case Nos. 73-1963, *et al.*, decided January 20, 1975, 514 F. 2d 279, rehearing denied, May 20, 1975. On June 19, 1975, United filed a petition for rehearing before the Commission, which will be considered in a subsequent document.

APPEARANCES

Paul Dobin, Roy R. Russo, Lawrence N. Cohn, and *Roy F. Perkins, Jr.* (Cohn & Marks) and *Vincent A. Pepper* and *Seymour M. Chase* (Smith and Pepper) on behalf of United Television Company, Inc. and United Broadcasting Company, Inc.; *Monroe Oppenheimer* on behalf of Washington Community Broadcasting Co.; *Ramsey L. Woodworth* (Hedrick & Lane) on behalf of witnesses Donald W. Parker and Peter B. Lassotovitch; and *William A. Kehoe, Jr., Thomas A. Fitzpatrick, Joseph Stirmer, Michael Faber,* and *P. W. Valicenti* on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted September 9, 1975; Released September 12, 1975)

By Commissioner Benjamin L. Hooks for the Commission:

1. This proceeding involves, *inter alia,* mutually exclusive applications filed July 1, 1966, by United Broadcasting Company, Inc. (United), for renewal of its license for standard broadcast station WOOK, in Washington, D.C., and August 31, 1966, by Washington Community Broadcasting Co. (Community)for a construction permit for a new standard broadcast station in Washington. In an Initial Decision, FCC 73D-7, released February 22, 1973, Administrative Law Judge Forest S. McClenning found both applicants qualified to be Commission licensees, but in light of United's history of violations of the Commission's technical rules he concluded that United lacked the "requisite comparative qualifications" to remain a Commission licensee, and he recommended the grant of Community's application. Now before the Commission for consideration are exceptions and a supporting brief, both filed August 5, 1974, by United; limited exceptions and a supporting brief, both filed July 16, 1974, by Community; and exceptions and a supporting brief, both filed July 17, 1974 by the Chief, Broadcast

Bureau (Bureau); together with reply pleadings filed August 15, 1974, by United, August 16, 1974, by Community, and August 19, 1974, by the Bureau. Oral argument before the Commission, *en banc,* was held on January 7, 1975.[2]

2. Based on our review of the record, the Judge's findings of fact and conclusions reflect the evidence of record and are affirmed except as they may be modified by this decision and by our rulings on exceptions as contained in the attached appendix. We find, however, that the Judge erred in concluding that United was entitled to comparative consideration with Community's proposal in this proceeding.[3] Specifically, we find that he failed to give proper consideration to the significance of his findings of fact concerning the following issues: whether station WOOK broadcast announcements which advertised articles such as "conquer roots", "money-drawing roots", and "spiritual

[2] On December 24, 1974, Community filed a petition for leave to amend and an amendment to its financial showing which raises questions concerning the Judge's conclusion that it is financially qualified to be a licensee. On December 31, 1974, United filed a petition for remand predicated on Community's amendment. The Bureau filed comments on United's petition on January 10, 1975, and United filed a reply on January 23, 1975. During the January 7, 1975, oral argument, counsel for Community requested an extension of time in which to file an additional amendment to correct the deficiencies in its financial showing. On March 7, 1975, Community filed a petition to amend and an amendment showing a new loan commitment. The Bureau filed comments on the petition on March 18, 1975. United filed a response on March 20, 1975, and Community filed a motion for leave to file a reply and a reply to United's response on March 28, 1975.

Also under consideration are a petition for leave to amend and an amendment filed April 9, 1975, by Community, showing new business interests for Community stockholder, Mr. Tyler Abell. On April 18, 1975, United filed an opposition to this petition and Community filed a reply on May 9, 1975.

[3] In light of the alleged deficiencies in Community's amended financial showing, the Judge's further conclusion that Community is qualified to be a Commission licensee cannot be affirmed at this time. See paragraphs 17-19, *infra.*

baths", or which offered to give three-digit scripture references to be used for "financial blessings"; whether WOOK took reasonable measures to protect its listening public from false, misleading, or deceptive advertising over its facilities; whether WOOK broadcast announcements or information concerning a lottery in conflict with Section 1304 of Title 18 of the United States Code, and Section 73.122 of the Commission's Rules; and whether WOOK's operation departed from Commission Rules and Regulations and the terms of its license authorization. The Judge's findings with respect to these matters mandate a conclusion that United engaged in misconduct requiring the denial of its renewal application for WOOK.

BROADCAST OF LOTTERY INFORMATION

3. The record clearly establishes that WOOK's facilities were used by various ministers to broadcast programs offering three-digit scripture citations in return for monetary donations. The broadcasting ministers claimed that the scripture citations had been successful in enabling their listeners to receive financial blessings (win at the numbers game)[4] and that they would enable listeners, who sent them monetary donations, to receive similar blessings in the future.[5] Similar representations were made on other

[4] A member of the Washington Police Department testified that the numbers or policy game is a form of illegal lottery prevalent in WOOK's service area in which people usually place small bets on the order of certain numbers, determined from the mutual prices paid on particular races at a specified track. A complete description of the operation of the numbers game in the WOOK service area is set forth in paras. 11-19 of the Initial Decision, and at pages 212-231 of the Hearing Transcript.

[5] The ministers broadcast alleged testimonials from listeners referring to three-digit citations which coincided with winning numbers. See the February 23, 1969, broadcast by Queen Mother Ruby Etta Allen (Communty Ex. 14); February 16, and March 23, 1969,

programs which did not broadcast three-digit citations but which used language associated with the numbers game, such as promising a "straight hit" or "straight blessing."[6] United conceded (Tr. 6326) that the language used in all of these broadcasts referred to the numbers games.

4. The Initial Decision concluded that United's broadcasts were not in conflict with Title 18 U.S.C., Section 1304,[7] because they did not refer to a specific lottery and because United was unaware of the references to the numbers game, citing *City of Jacksonville,* 21 FCC 334, 410 (1956). However, in spite of the fact that there are different "backers" who act as individual "banks" for the numbers game, the player often does not know or care who his backer is; there is only one winning number on any given day; and the backers act in concert in determining the winning number and payoffs. The numbers game is thus in fact one consolidated lottery backed by different people working in concert (I.D. Para. 17, Tr. 212-231).

broadcasts by Rerevend Williams (Community Exs. 15 and 16); March 23, 1969, broadcast by Dr. Pryor (Community Ex. 19); June 1, 1969, broadcast by Father Franklin (Community Ex. 20); June 8, 1969, broadcast by Reverend Fleming (Community Ex. 25); and June 1 and 15, 1969, broadcasts by Reverend Dowell (Community Exs. 28A and 29).

[6] A "straight hit" is a slang term for winning the numbers game with a three-digit number (Tr. 216-217). See the March 30, 1969, broadcast of Rev. Butler (Community Ex. 32) and January 12 and March 16, 1969, broadcasts by Rev. Jefferson (Community Exs. 38 and 39).

[7] 18 U.S.C. 1304 provides in pertinent part: Whoever broadcasts . . . or . . . knowingly permits the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

5. The Initial Decision's reliance on *City of Jacksonville, supra,* was also improper. There is no requirement in Section 1304 that licensees have prior knowledge of the broadcasts and in subsequent decisions we have departed from the holding of *City of Jacksonville.* In *Ohio Quests, Inc.,* 8 FCC 2d 859 (1967), we found a licensee violated Section 1304 where the wrongdoer was attributed to an inexperienced operator who made improper broadcasts without the knowledge or consent of the licensee. In *Laury Associates, Inc.,* 27 FCC 2d 870 (1971), the violations were based on a determination that the licensee intended to do the acts complained of and we stated that it was not necessary to show that he had knowledge that the acts were in violation of law. In *University of Florida,* 40 FCC 2d 188 (1973), we held that a licensee, who in good faith relied on information supplied by an advertising agency and broadcast information concerning a lottery, was accountable for the violations of Section 1304. Thus, United broadcast information concerning a lottery and it would be responsible for the violations of Section 1304 even if it could be shown that they had occurred without the knowledge of its principals. Moreover, even the claim that the principles were unaware of the lottery information "reflects a lack of responsible supervision over program content on the part of the licensee." *City of Jacksonville,* 21 FCC at 410. See paras., 7-13, *infra.*

CLAIM OF RELIGIOUS PROGRAMMING

6. To the extent that its "broadcasts encouraged participation in illegal activity . . . United urges no constitutional inhibition against the imposition of sanctions." Rather, citing *United States* v. *Ballard,* 322 U.S. (1944), United contends that the Commission "may not inquire into the truth or falsity of what is preached as religion" and that it is not "responsible for whatever may be deemed to

be false, deceptive or misleading" in religious broadcasts.[8] We agree with United that the truth of a sincerely held religious belief may not be questioned. There are, however, limits on the activities which may be carried on in the name of religion, and it is well settled that conduct which is in violation of social duties or law may be prohibited. *Reynolds* v. *United States,* 98 U.S. 145 (1879) (prohibiting polygamy); *Jacobsen* v. *Massachusetts,* 197 U.S. 11 (1905) (requiring smallpox vaccinations); and *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940) (approving licensing of persons engaged in solicitations for religious purposes). Moreover, while the Commission may not abridge the freedom to believe, it may question whether particular expressions of belief are sincerely held, *Gillette* v. *U.S.,* 401 U.S. 437 (1971),[9] and the good faith of the broadcasting ministers may be considered in order to protect radio listeners from fraud. See *United States* v. *Ballard, supra.*[10] In view of the facts that numbers references are not part of any religious creed, that the representations of the ministers concerning financial blessings defy belief,[11] and that United

[8] United's brief in support of exceptions, p. 15.

[9] In *Gillette* the court questioned the sincerity of the religious beliefs of persons claiming conscientious objector status from the Selective Service Draft.

[10] See also *Founding Church of Scientology* vs. *United States,* 409 F. 2d 146 (D.C. Cir. 1969), where the court said that: "Not every enterprise cloaking itself in the name of religion can claim the constitutional protection conferred by that status. It might be possible to show that self-proclaimed religion was merely a commercial enterprise, without the underlying theories of man's nature of his place in the Universe which characterize recognized religion. Though litigation of the question whether a given group or set of beliefs is or is not religious is a delicate business, our legal system sometimes requires it so that secular enterprises may not unjustly enjoy the immunities granted to the sacred."

[11] Several of the broadcasting ministers promised their listeners that they could bring repeated "money blessings" and "straight hits" (I.D. paras. 22, 28, 29 and 30). The Judge specifically found

failed to show that the ministers had enabled their listeners to receive financial blessings or that the ministers honestly believed they could help their listeners get financial rewards by playing the numbers which they furnished,[12] we conclude that our action here does not violate the constitutional restraints of the First Amendment.[13]

LICENSEE RESPONSIBILITY

7. We find little merit in United's further arguments that it was acting in good faith, victimized by clever subterfuges of the broadcasting ministers, and unaware of the significance or meaning of the broadcasts. While United claims it did not know or have notice that the ministers using its facilities were broadcasting numbers references until June 23, 1969, when Community filed a petition to enlarge issues, the record establishes that United had notice of various broadcasts which should have alerted it to the possibility of wrongdoing and prompted it to conduct an investigation. Such notice was given to United as early as January 3, 1967, when Community, in a petition to deny United's application for renewal of license, charged WOOK with broadcasting spurious religious programs and quoted a broadcast by Bishop Bonner over WOOK's facilities as saying, *inter alia:* "Every day you try to win and you don't

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the mathematical probability of selecting a winning number is 1/1000 and the probability of selecting a winning number twice in succession is 1/1 million (I.D. para. 19).

[12] Mr. Von Blasingame testified that the ministers denied broadcasting any matter which referred to the numbers game (Tr. 446, 491, 800 and 803).

[13] We also note that United's own practices were inconsistent with any claim of constitutional inhibition. United prohibited the ministers from broadcasting three-digit scripture citations after Community filed is [sic] June 23, 1969, petition to enlarge issues requesting an issue concerning the broadcasting of lottery or numbers information.

win. You put a little money here and you put a little money there and you don't win." Bishop Bonner asserted that he would enable his listeners to "be the most successful person[s] in the game."[14] United's response was to argue that Bishop Bonner and other ministers making similar promises were engaged in *bona fide* religious broadcasts.[15] It did not halt the improper use of its facilities or institute any changes in its broadcast policy at that time (Tr. 926). Richard Eaton, United's principal, did discuss the allegations with various employees, including Mr. Von Blasingame.[16] Mr. Eaton, however, deferred to Mr. Von Blasingame's judgment with respect to what religious programs would be appropriate (Tr. 651-657), and United failed to implement any effective control over its programming.

8. Subsequently, in 1968, Pierre Eaton, the son of Richard Eaton, who was manager of Station WSID, United's Baltimore affiliate, formulated a policy prohibiting ministers from broadcasting three-digit scripture citations over WSID. Pierre Eaton wrote a memorandum implementing that policy which he sent to WOOK. The memorandum,[17] *inter alia,* specifically prohibited broadcasting of:

• • • • • • •

(4) Gift, prize or award by contest, lottery or similar arrangement involving chance and a winner or winners.

(5) Chapter numbers, paragraph numbers or song numbers except in connection with a recitation of the chapter, paragraph or a verse of the song in full.

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[14] Petition to deny at 3-5.

[15] Opposition to petition to deny at 1-5.

[16] Otto Von Blasingame is the son of a black minister who is familiar with the black community and black religious needs and whose duties at WOOK included responsibility for scheduling and selling time for religious programs.

[17] Community Ex. 45.

Although Mr. Von Blasingame listened to the tapes of every religious program broadcast by WOOK (Tr. 411), and was therefore familiar with the use of scripture citations, he decided that compliance with part (5) of the Pierre Eaton memorandum should not be required, because "the recitation of chapter numbers, *et cetera,* were as much a part of religious services as singing of a hymn . . ." (Tr. 936). Thus, in effect, WOOK ignored the Pierre Eaton memo, and it permitted the improper use of its facilities to continue.

9. The broadcasting ministers consistently made highly suspicious promises of financial blessings, and it was readily apparent from the broadcasts themselves that inquiry was required. Thus, during a May 18, 1969, broadcast, Reverend Dowell read an alleged testimonial which stated:

> The first time I came to see you, I was blessed for $135 for a quarter, and the second time I came I received $540 for a $1.00 investment. And the last time I was there I really hit the jackpot because I placed $10 where you told me to and the Lord blessed me with over $5,000. (Community Ex. 28 at 9).

The ratio used for the payoffs referred to in the alleged testimonial was the exact payoff for a winning number. Such promises were repeated often and Mr. Von Blasingame was aware of them because he listened to tapes of all the religious broadcasts. See paragraph 8, *supra.* While Mr. Von Blasingame admitted that he could not conceive of any investment which would pay such a return and that he did not understand the terminology used, he made no inquiry in order to obtain an understanding of the broadcasts (Tr. 437, 442, 501-508). From the very nature of the broadcasts, it is apparent that, even assuming United was unaware of the specifics of the numbers game, if Mr. Von Blasingame had acted with reasonable care, United could have ascertained the exact nature of the wrongdoing and avoided subsequent improper broadcasts.

10. Moreover, as licensee of station WOOK, United had responsibility for, and an obligation to understand what was being broadcast over its facilities. In this regard we have held licensees responsible for the content of foreign language broadcasts which they did not understand, *Trans America Broadcasting Corp.,* 20 FCC 2d 469 (Rev. Bd. 1969) and 33 FCC 2d 596 (1972), and for the meaning of the terminology used in song lyrics, *Licensee Responsibility to Review Records Before Their Broadcast,* 28 FCC 2d 409 (1971), clarified, 31 FCC 2d 377 (1971), *aff'd sub nom., Yale Broadcasting Co.* v. *FCC,* 478 F. 2d 954 (App. D.C. 1973) *cert. den.,* 94 S. Ct. 211. Here, no less should be expected of United and it cannot escape the consequences of its own claimed naivete. Mr. Eaton had notice of the improper use of WOOK's facilities from Community's pleadings and Mr. Von Blasingame heard tapes of the spurious programs. Under these circumstances United must be held responsible for the continued improper use of its facilities.

11. It was not until after the June 23, 1969, petition to enlarge issues filed by Community, that United finally prohibited further broadcasts of three-digit scripture citations. Even then, United failed to remove the offending ministers from the air, and its belated efforts were ineffective in avoiding continued broadcasts containing promises of financial gain or encouraging participation in the numbers game. The record contains evidence of two subsequent broadcasts which used WOOK's facilities for solicitation of funds in return for promises of future financial gain. In both of these instances, three-digit scripture citations were not used in the broadcasts but were mailed to the listeners. United contends that, because the ministers did not actually broadcast the three-digit citations, it was the victim of new and clever subterfuges and it asserts that it should not be held responsible for what the ministers using its facilities mailed to their listeners. United having notice of the previous improper use of its facilities, had an affirmative duty to prevent further improprieties. There is no question that the

ministers involved previously used WOOK's facilities to offer tips on the numbers game and that United should have been aware of this practice before Community filed its June 23, 1969, petition. The so called subterfuges broadcast by ministers involved promises to convey messages which, *inter alia,* would "build up what you make [sic] in your pocketbook . . . put food in your ice box . . . and money deep down into your pocket"; and an offering of an opportunity to "reap one of the greatest harvests of his rich blessings. . . ."[18] There was nothing new in these alleged subterfuges which were similar to broadcasts previously carried over WOOK that also contained references to the number games, and promises of financial rewards, but did not broadcast three-digit scripture citations.[19] We conclude, therefore, that there is no merit in United's claim of subterfuge and that, having been alerted to the earlier improprieties, United's subsequent conduct, allowing continued improper use of its facilities, displayed the "callous disregard" for its listening audience found by the Judge.[20]

12. United also argues that it should not be subjected to any sanctions on the basis of the improper broadcasts because it had taken reasonable precautions to prevent the wrongdoing. Specifically, it notes that Mr. Eaton hired Mr. Von Blasingame, the son of a black minister and a person familiar with the black community, to oversee WOOK's religious programs. Mr. Richard Eaton, himself, was active in WOOK's affairs spending 3 days a week at the station, consulting with Mr. Von Blasingame and other station officials about WOOK's programming. Such precautions, however, are only meaningful to the extent that

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[18] Community Ex. 30.

[19] See September 6, 1966, broadcast by Rev. Williford (Community Ex. 6), and January 12, May 4 and 25, and June 8, 1969, broadcasts by Rev. Cooper (Community Exs. 33, 35, 36 and 37).

[20] I.D. para. 213.

Mr. Eaton and Mr. Von Blasingame properly executed their responsibilities for supervising WOOK's operations. As noted, Mr. Von Blasingame heard the spurious broadcasts, did not understand them, and made no inquiry. When we consider the frequency and nature of the questionable broadcasts, the information contained in pleadings filed by Community, and the memo by Pierre Eaton establishing a policy designed to prevent identical improprieties at another United station, there was adequate opportunity for Richard Eaton, who was active in WOOK's affairs, to discern and eliminate the spurious broadcasts chronicled in the record of this proceeding. Under these circumstances, we can attach no credence to United's assertions of due care and we conclude that United and Richard Eaton were remiss in their supervision over WOOK's religious broadcasts.

13. We thus find, not only that United violated Section 1304, but also that its constitutional argument and claim of due care are without merit. In light of the repetitive nature of the violations of Section 1304 over a prolonged period of time, we conclude that the record mandates a denial of United's renewal application. Moreover, apart from any violation of Section 1304, the broadcasts, including testimonials of alleged predictions and promises of future "hits" (winning numbers), see notes 5 and 6, *supra,* are clearly in furtherance of numbers game activities. Since the numbers game is illegal in the District of Columbia, see Title 22 D.C. Code, Section 1501, *et seq.,* such broadcasts show an extended pattern of conduct clearly adverse to the public interest which constitutes an independent ground for denial of United's application for renewal of its license for station WOOK. See *Report and Order Amending the Commission's Rules to Regulate the Broadcast of Horseracing Information,* enunciating our policy against use of broadcast facilities in aid of illegal gambling activities, 36 FCC 1571, at 1572-73 (1964).

FALSE AND MISLEADING ADVERTISEMENTS

14. WOOK's religious programs also offered "roots," "incense" and "spiritual baths" as a means of attaining financial gain or solving personal problems.[21] We affirm the finding of the Administrative Law Judge that offerings of "roots," "incense" and "spiritual baths" constituted false advertising.[22] While United presented expert testimony that the sale of these items was not unlike the sale of a rosary and that the articles were intended to bring the audience of the radio ministers closer to God, the representations which accompanied the offers of these articles, were without religious or factual basis. For example, in his September 5, 1966, broadcast, Bishop Bonner promised that his "special money-drawing root" could make one "the most successful person in the game." [23] We recognize that it is not within the province of this Commission to question the truth of the professed beliefs of these ministers. We can, however, question the sincerity of those beliefs and of their representations,[24] and, just as we con-

[21] *E.g.*, see the September 5, 1966, broadcasts by Rev. Frank Thomas (Community Ex. 5) and by Bishop Bonner (Community Ex. 7), and a March 16, 1969, broadcast by Rev. Dowell (Community Ex. 26).

[22] Public Notice, 40 FCC 125 (1961), *Licensee Responsibility with Respect to the Broadcast of False, Misleading or Deceptive Advertising*, which was sent to all broadcast station licensees together with a copy of a Federal Trade Commission publication "Advertising Alert." The Public Notice provided, *inter alia*, that the "adequacy of the measures instituted and carried out by the licensee in the fulfillment of his responsibility" to protect the public from false, misleading and deceptive advertising, will be considered in determining whether his operation is in the public interest. The notice was received and read by Mr. Eaton, who asserted that United had a policy on deceptive advertising which conformed to the Public Notice (Tr. 367-371).

[23] Community Ex. 7.

[24] See para. 6, *supra*.

cluded that the three digit scripture citations were not used in good faith, we conclude that there is no valid basis, in religion or otherwise, for the claims, such as those of Bishop Bonner, which accompanied the offers of the "roots," "incense" and "spiritual baths." The representations and articles offered by the broadcasting ministers are similar to those in *Gottlieb* v. *Schaffer*, 141 F. Supp. 7 (S.D.N.Y. 1956), where the court upheld enforcement of a mail fraud order by the Postmaster General, and they are subject to our consideration here. Based on this record we find the repeated broadcast offers of "roots," "baths" etc., together with promises of financial blessings and solutions to personal problems were false and misleading, that United continually failed to take reasonable measures to protect its listeners from such use of its facilities, and that this use of United's facilities also mandates the denial of its renewal application.

15. We further find that United failed to take proper precautions to protect its listeners from false advertising carried for more than a year on behalf of the Empeco Corporation.[25] It is conceded that initially there was no reason for United to question the propriety of these ads. However, on or about September 14, 1965, United received notice of a Federal Trade Commission investigation concerning the veracity of Empeco's ads when the Federal Trade Commission requested transcripts of Empeco's advertisements. In spite of the fact that United was on notice concerning its duty to protect the public from false,

[25] Empeco offered to sell furniture and home appliances at "no-money down", with low weekly payments and free additional bonus merchandise. In fact, Empeco would not sell merchandise without a down payment or trade in, or arrange the promised low weekly payments. In addition, Empeco overstated the value of the bonus merchandise and did not give away other merchandise promised "to the first 10 callers." Such ads were typical of the type of false announcements carried on behalf of Empeco. See para. 78 of the Initial Decision.

misleading or deceptive advertising,[26] it failed to initiate any independent inquiry concerning the propriety of the ads.[27] It should also be noted that advertising carried for Richard Eaton's book, "Work Wonders from Within Yourself", did not conform to guidelines established by the Federal Trade Commission for determining the regular selling price for items offered at discount. Although these latter matters are not so serious that, standing alone, they would warrant denial of United's renewal application, United's conduct here, does not meet the high standards which the Commission expects of its licensees and these shortcomings reflect adversely on United's qualifications to be the licensee of Station WOOK. When they are considered in conjunction with United's other derelictions, they give added weight to our determination that its renewal must be denied.

VIOLATIONS OF THE COMMISSION'S TECHNICAL RULES

16. The Judge, in reaching his determination, attributed a "comparative disqualification" to United for its repeated violations of the Commission's technical rules. The Judge's findings of fact with respect to those violations are affirmed except as modified by our rulings on the exceptions.[28] United's previous history of operations of WOOK has been replete with violations of the technical rules. Those violations were the subject of an earlier hearing, where United was assessed a $7,500 forfeiture, and where, in reliance on representations that its future operations would be in compliance with the technical rules,

[26] Mr. Eaton was aware of the Public Notice with respect to deceptive advertising. See note 22, *supra*.

[27] United did cancel Empeco's advertising before the subsequent issuance of a Federal Trade Commission complaint, but it did so only after Empeco became 120 days in arrears on its bill to WOOK.

[28] See the rulings on Bureau exceptions 13, 17-24, 26, 28-31, and 35.

United's license was renewed, 4 FCC 2d 293. Notwithstanding the forfeiture and its representations, the violations continued. A subsequent inspection on September 3, 1969, disclosed 19 violations of the Commission's rules.[29] Although United hired experts to oversee the operation of WOOK and the qualifications of the experts are unquestioned, the first expert was not not hired until after the designation of the previous hearing on issues concerning alleged violations of the technical rules in 1965, and, after the expert died in 1967, he was not replaced and responsibility for overseeing WOOK's technical operations was left to an untrained employee until November 1970, after the issues were enlarged in this proceeding to consider violations of the Commission's technical rules. Under these circumstances we must conclude that the hiring of the experts was merely "window dressing" employed when WOOK's license was placed in jeopardy. We further find that United's past representations were of no value, that no reliance can be placed on its present promises of future compliance, and that there are no mitigating factors. Thus, on the basis of its violations of the technical rules standing alone, we find that United's application for renewal of the license of Station WOOK must be denied. See *Court House Broadcasting Co.*, 21 FCC 2d 792 (1970) and *Heart of the Black Hills Stations*, 32 FCC 2d 196 (1971).

COMMUNITY'S APPLICATION

17. The Judge found Community qualified to be a Commission licensee and recommended the grant of its application on a comparative basis. Having found that United is not entitled to renewal of the license of station WOOK, there is no need to consider the propriety of the Judge's findings on the comparative issue. With respect to Community's basic qualifications, we find that, although the Judge's findings and conclusions reflected the evidence of record at the time of the Initial Decision, Community's

[29] In several instances, numerous repeated violations of the same rule were cited.

bank loan commitment expired and it amended its financial showing, thereby raising questions concerning the Judge's findings with respect to its own financial qualifications.[30] Community has filed an additional amendment containing a new loan commitment, dated February 27, 1975, for a $400,000 loan from The National Bank of Washington. United opposes the amendment arguing that Community failed to show that it can satisfy the bank's collateral requirements and that the financial statements supporting the loan guarantees are sufficient to meet the Bank's requirements. It also contends that the loan constitutes a new financial proposal subjecting Community's entire qualifications to reexamination.

18. Although the February 27 commitment letter is basically identical to Community's prior loan commitment, it does require additional guarantors; as such, the letter is a new commitment and Community must establish its ability to satisfy the terms of that commitment. The bank will require "that the stock of the Washington Community Broadcasting Company be pledged as collateral" for the loan. Community's amendment is presently deficient in that it has not established the willingness of all of its shareholders to pledge their stock as security or of the bank to accept a pledge of less than all of its stock. United's other arguments concerning Community's financial qualifications are without merit. Community has furnished the guarantees required by the bank.[31] Additionally, because

[30] On December 31, 1974, United filed a petition requesting that the Commission remand Community's application for further hearings on its financial qualifications, but for the reasons set forth herein no action on this request is required at this time.

[31] We recognize that in several instances Community's guarantees are executed by both a stockholder and the stockholder's spouse, while the supporting financial statement was executed by only one of the spouses. However, the guarantees are in a form specified by The National Bank of Washington and neither the guarantees nor the commitment letter require supporting financial statements.

the adequacy of the amount of Community's financial proposal including the $400,000 loan was fully litigated and found to be sufficient, United cannot now utilize the lapse of Community's loan commitment and the substitution of a new loan commitment in the same amount, to relitigate these questions.[32]

19. We also find that there is good cause for allowing Community to further amend its application [33] and for deferring final action on that application and on United's petition for remand. Community was found to be qualified, and except for the question concerning the pledge of its stock it would still be fully qualified to be a licensee. The deficiencies in Community's showing can be cured by an additional amendment which would eliminate any need for further hearings. *Cf. Brown Broadcasting Co., Inc.*, 12 FCC 2d 189 (1968), and 14 FCC 2d 143 (1968). Moreover, inasmuch as United is not qualified to be a licensee, no prejudice will result from this action, and it will serve the public interest by providing the most expeditious means for instituting a new service to replace the one deleted by United's disqualification.

20. Accordingly, It Is Ordered, That the application of United Broadcasting Company, Inc. (File No. BR-1104) for renewal of its license for station WOOK, at Washington, D.C., Is Denied.

21. It Is Further Ordered, That the United Broadcasting Company, Inc., Is Authorized to continue to operate

[32] United failed to take exception to the Judge's findings that a $400,000 loan would be sufficient and that Community is financially qualified to be a licensee. Any objections to the adequacy of Community's financial proposal which were not saved by the filing of exceptions are waived under Section 1.277(a) of the Rules and are not entitled to consideration here.

[33] Community's proposed amendment filed April 9, 1975, reflects a changed address and business interest, which contrary to United's contentions, have no bearing on the determinations to be made in this case.

its station until 12:01 a.m. on February 28, 1976, to enable the licensee to conclude the station's affairs; provided, however, that if the licensee seeks timely judicial review of this decision, it is authorized to continue operation of the station until thirty (30) days after the final disposition of that appeal.

22. It Is Further Ordered, That the petitions for leave to amend filed December 24, 1974, March 5, 1975, and April 9, 1975, by Washington Community Broadcasting Co., Are Granted and the amendments Are Accepted.

23. It Is Further Ordered, That consideration of the petition to remand filed December 31, 1974, by United Broadcasting Company, Inc., Is Deferred, and that consideration of the questions raised concerning the financial amendments filed by Washington Community Broadcasting Co., Is Deferred for 30 days from the release date of this Decision in order to afford Washington Community Broadcasting Co. an opportunity to file such further amendments to its application or other information as it may deem appropriate.

Federal Communications Commission,
Vincent J. Mullins, *Secretary.*

APPENDIX

UNITED'S EXCEPTIONS

Exception Nos.	*Ruling*
1, 2, 3, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 27, 28, 30, 33, 34, 54, 55, 63, 64, 65, 66, 67, 68, 69, 70,	Denied. The exceptions are not of decisional significance.
4, 5, 18, 19	Denied. The findings excepted to are relevant to issue 2.
8	Denied. The Initial Decision accurately reflects the evidence of record.
23, 24, 25, 26	Denied. We recognize that Richard Eaton was active in WOOK's affairs and devoted 50 percent of his time to the station. The value of Mr. Eaton's participation, however, was tempered by his lack of diligence in ascertaining or correcting the abuses reflected in the record of this pro-proceeding.
29	Denied. The Commission cannot attach credibility to United's assertions of a good faith effort to find a comparable replacement for Mr. Cohn. It took over 3 years to find a replacement, and it is noted that both Mr. Cohen and Mr. Copperthwait were only retained after United's renewal applications were designated for hearing on issues dealing with its failure to comply with the Commission's technical rules.

31 .....Denied. The requested finding is redundant. See par. 141 of the Initial Decision.

32 .....Denied. The requested finding is redundant and cumulative. The Judge found that Mr. Myers relied on WOOK's engineering personnel and visited the control room on a daily basis to insure that the operators were keeping up with their duties.

35 .....Granted. Issue 1 is whether WOOK's programs constituted "false, misleading or deceptive advertisements."

36 .....Denied. While inquiry into the truthfulness of legitimate religious expressions is prohibited by the first amendment, references to the numbers game were not shown to be part of any religion and are not entitled to constitutional protections.

37, 39, 41, 42...Denied. The requested conclusions are not supported by the evidence of record.

43, 44, 45, 47, 48, 49, 51, 52, 53, 57. Denied. The record establishes each of the violations, and while, if considered singly, they would not warrant the sanction imposed here, when considered as a whole and in conjunction with United's prior violations, they become decisionally significant.

46 .....Denied. Section 73.116(a) requires that the logs be made available to Commission personnel upon request.

50 .....Granted. To the extent that the violations occurred on only 8 days and denied in all other respects.

38, 40, 56, 58...Denied. The Judge's conclusions are supported by the evidence of record.

59 .....Denied. The evidence of violations of the technical rules requires the denial of United's renewal application.

60, 61, 62, 72...Denied. In the light of the conclusions in our Decision herein concerning United's programming practices, United's record of allegedly meritorious programming is not decisionally significant. *Cf., KFPW Broadcasting Co.,* 40 FCC 2d 126 (1973).

71, 73.....Denied. The record requires the denial of United's renewal application.

74 .....Granted to the extent that questions exist concerning Community's financial qualifications to be a Commission licensee and denied in all other respects.

75 .....Denied. The record requires the denial of United's renewal application. A final determination on the merits of Community's application must be deferred pending resolution of the questions concerning its financial qualifications.

EXCEPTIONS OF WASHINGTON COMMUNITY BROADCASTING CO.

Exception Nos.	*Ruling*
1, 2, 4, 5, 6, 7...	Denied. The exceptions are not of decisional significance in light of our Decision herein.
3	Granted. None of the ministers testified. The ministers told United their broadcasts had nothing to do with gambling, and United did not consider its own restrictions on the use of three digit scripture citations to be interfering with freedom of religion.

8 .....Denied. The requested finding is redundant. The Judge concluded that the WOOK broadcasts of numbers references were not part of any religion and not entitled to first amendment protections.

9, 16.....Granted in substance as reflected in our Decision herein.

10, 11, 12, 13, 14, 15, Granted to the extent that our conclusions have been substituted for those of the Initial Decision and denied in all other respects for lack of decisional significance.

17 .....Granted.

EXCEPTIONS OF THE BROADCAST BUREAU

Exception Nos.	*Ruling*
1	Granted. The numbers game is a specific, single lottery.
2, 3, 4, 5, 7, 8, 11, 12, 14, 15, 16, 34, 36, 38, 39, 49.	Denied. The exceptions are not of decisional significance in light of our decision in this proceeding.
9	Granted to the extent that the articles such as, "Money Drawing-Incense," "Conquer Roots," etc. were not shown to provide the results promised by the broadcasting ministers. In all other respects, denied, as not being of decisional significance.
10	Granted. There is no proof in the record that gambling is part of any religious belief.
13	Granted.
17	Granted.

18 .....Granted. The Judge's findings in pars. 98-101 that WOOK was in fact operating more than 5 percent overpower at various times only on 6 days during the period of May 1-Sept. 3, 1969, inclusive, as contrasted to 82 days listed in the Official Notice of Violation are based on an unwarranted interpertation of equipment accuracy tolerances as defined in the FCC rules. The record establishes that, to stay within the 5 percent authorized power tolerance, the permissible daytime and nighttime antenna current readings must not exceed 3.96 and 2.78 amperes respectively. The WOOK antenna current meter at the transmitter has an accuracy from +2 percent to —2 percent of the full scale readings as required by the rules, which is equal to from +0.1 to —0.1 amperes. The remote control, studio located meter, which was actually used to log the antenna current values, is required by the rules to be accurate within from +2 percent to —2 percent of the antenna current readings at the transmitter, which works out to from +0.08 to —0.08 and from +0.05 to —0.05 amperes respectively for the WOOK authorized day and night operations. The readings of the remote control antenna meter, barring reported malfunctioning or logging errors, were to be accepted at face values, as was testified to by WOOK's consulting engineer, and the FCC inspector (Tr. 4911, 3052, 1617). This procedure was followed by the FCC inspector who cited WOOK for overpower operation whenever the antenna readings

equalled or exceeded 2.8 and 4.0 amperes. The Judge, however, decided that the permissible overpower limits of 2.78 and 3.96 amperes would have to be increased by the respective maximum combined tolerances of 0.15 and 0.18 amperes of the two meters, raising such limits to 2.93 and 4.14 amperes. While such an approach is obviously contrary to the practice of taking at face value readings of meters of acceptable accuracy, it is also scientifically erroneous, since it overlooks the possibility that the respective meter errors would not always be additive, and also mistakenly assumes that both meters would simultaneously deviate to the full extent allowable under the Rules. Consequently, the findings in pars. 98-101 of the Initial Decision did not fully reflect all the pertinent considerations.

19, 20 .....Granted. There is no evidence in the record to indicate that the log entries of WOOK's antenna current indicating more than 10 percent under power operation were erroneous. The theoretical tolerances for low power at WOOK are 3.66 amperes daytime and 2.57 amperes nighttime. In its reply to the Official Notice of Violation, the licensee contended that it should not be charged with low power violations for antenna currents of 3.6 and 2.5 amperes or above, because of its operators' practice of rounding off readings to the nearest scale division. The record does not always bear out this practice, and furthermore it appears that if it was done correctly, the 2.5 ampere entries, which con-

stitute the bulk of low power readings, could indicate actual readings of 2.5-2.55 amperes which would still be below the 2.57 ampere theoretical limit.

21 .....Granted to the extent that the operating log for June 8, 1969, did not indicate the cause of the carrier wave interruption. However, the maintenance log for June 9, 1969, does contain an explanation for the interruption.

22 .....Granted.

23 .....Granted as it applies to nighttime operation only, involving antenna current readings of 1.2 to less than 1.4 amperes, since readings of 1.4 amperes and higher were unlikely (Tr. 1169-70), and were probably due to operator error.

24 .....Granted.

24(a).....Denied. The exception is not of decisional significance.

25, 26 .....Granted. The issue here involves the validity of field strength recordings made by the FCC Field Operations Bureau of the relative levels of the WOOK signals, in order to determine whether the station's operation was with the daytime or nighttime power mandated by its license. WOOK's consulting engineer presented 2 different analyses designed to impugn the validity of these recordings, which were effectively contradicted by the FCC engineer who participated in the recording of the WOOK signals. These recordings by themselves substantiate that on the specified dates WOOK was not diligent in

changing its operating power to comply with its license, but their validity is further demonstrated by the close agreement between the stations operating logs and the recorder charts. (Broadcast Bureau Exhibits 9, 29, 39(A), 39(b); United (WOOK) Exhibit E-27).

27 .....Denied, as being substantially redundant in view of par. 113 of the Initial Decision.

28, 29 .....Granted. The exceptions are relevant in establishing the validity of the field strength recording of the WOOK signals.

30, 31 .....Granted. With respect to exception 31, the record does explain meter adjustments (Tr. 5340) and treats the subject of electrical noise (Tr. 5355).

32 .....Denied, as redundant and not of decisional significance in view of pars. 116-128, inclusive, of the Initial Decision.

33 .....Denied, as redundant in view of our rulings on exceptions 25, 26, supra.

35 .....Granted. WOOK's consulting engineer submitted daytime field strength measurements of WOOK's signals along 4 radials around the station in order to determine the radiation efficiency of its antenna system. While the rules require the use of 8 radials for such a purpose, WOOK's consultant testified to the effect that sufficient data to establish antenna radiation efficiency could be obtained on the basis of 4 radials. Our inspection of his analysis of the 4 radials indicates that, for the 45 and 315 degree radials, the measurements

are not disposed about the conductivity line in a manner indicating that the best fit curve was drawn through them in accordance with section 73.18(a)(3) of the rules. Accordingly, a further question is raised concerning the adequacy of the 4 measured radials.

40 .....Granted.

41 .....Granted. The articles offered were not bona fide religious articles, and the representations concerning them, together with the requests for monetary donations constituted false, misleading and deceptive advertising not entitled to constitutional protection.

42 .....Granted. There is no requirement of prior knowledge. See *Ohio Quests, Inc., supra.*

43 .....Granted. The broadcast references were to a specific existing lottery in violation of 18 U.S.C. 1304.

44 [1].....Granted.

45 .....Denied. The Judge's conclusion is a reasonable interpretation of the evidence of record.

46 .....Granted with respect to violations 9, 10, 11, 12, 13, and 16, consistent with, and based on our rulings on exceptions 18, 19, 20, 21, and 22. Denied with respect to violation 5 since the exception is cumulative and the Initial Decision accurately reflects the evidence of record.

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[1] Incorrectly numbered 45 at the top of page 30 of the Bureau exceptions.

47 .....Granted, consistent with and based on our rulings on exceptions 25, 26.

48 .....Granted.

50, 53[2].....Granted. United's programming is not of decisional significance.

51 .....Granted in substance. The evidence warrants the denial of United's renewal application.

52, 54.....Granted in substance, as reflected in our Decision herein.

[2] Incorrectly numbered 54 on page 33 of the Bureau's exceptions.

APPENDIX C

FCC 76-457
40653

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Applications of

UNITED TELEVISION COMPANY, INC. (WFAN-TV)[1]
DOCKET No. 18559
File No. BRCT-585
Washington, D.C.
For Renewal of License

UNITED TELEVISION COMPANY, INC. (WFAN-TV)[1]
DOCKET No. 18561
File No. BPCT-3917
Washington, D.C.
For Construction Permit

UNITED BROADCASTING COMPANY, INC. (WOOK)
DOCKET No. 18562
File No. BR-1104
Washington, D.C.
For Renewal of License

WASHINGTON COMMUNITY BROADCASTING CO.
DOCKET No. 18563
File No. BP-17416
Washington, D.C.
For Construction Permit For
New Standard Broadcast Station

[1] The applications of United Television Co., Inc. for renewal and modification of its license for WFAN-TV, Washington, D.C., were dismissed upon revocation of the license by the Commission, 46 FCC 2d 698, released April 26, 1974, affirmed, C.A.D.C., Case Nos. 73-1963, *et al.*, decided January 20, 1975, 514 F.2d 279, rehearing denied, May 20, 1975. On June 19, 1975, United filed a petition for rehearing before the Commission, which will be considered in a subsequent document.

Memorandum Opinion and Order

(Adopted: May 19, 1976; Released: May 28, 1976)

By the Commission:

1. In a Decision, 55 FCC 2d 416, released September 12, 1975, the Commission denied the application of United Broadcasting Company, Inc. (United) for renewal of its license for standard broadcast station WOOK, Washington, D.C., and deferred final action on the mutually exclusive application filed by Washington Community Broadcasting Co. (Community) for new facilities in Washington, and on a petition for remand filed December 31, 1974, by United. In an Order, FCC 75-1045, released September 12, 1975, the Commission denied a request for a stay of this proceeding filed by United. That request was predicated on new information concerning the reliability of a witness whose testimony was cited in the Initial Decision. Now before the Commission are: (1) a petition for reconsideration and rehearing filed October 14, 1975, by United; a supplement thereto filed January 12, 1976, by United; an opposition, filed October 28, 1975, by Community; an opposition and request for expedition, filed January 20, 1976, by Community; oppositions filed October 30, 1975, and January 27, 1976, by the Chief, Broadcast Bureau; and replies filed November 6, 1975, and February 4, 1976, by United; and (2) a petition for leave to amend and an amendment filed October 10, 1975, by Community; and comments filed October 22, 1975, by the Chief, Broadcast Bureau.[2]

[2] Also before the Commission are: (1) a letter supplementing Community's October 10 amendment, filed February 26, 1976; a letter filed March 11, 1976, by United; a motion to strike United's letter and to expedite consideration of United's pending motion for reconsideration filed March 23, 1976, by Community; a reply filed March 30, 1976, by United; and a reply filed April 6, 1976, by Community; (2) a request for waiver of Section 1.106(f) of the rules to permit a pleading in excess of 25 pages filed October 8, 1975, by United; which is not opposed and which will be granted;

2. It is a general and sound rule of law that the only valid grounds for rehearing are manifest error or omissions so material that their correction will result in substantial alteration of the original decision. Correspondingly, a rehearing will not be granted by the Commission merely for the purpose of arguing matters which have previously been considered and resolved. *WWIZ, Inc.*, 37 FCC 685 (1964).

3. The petition for reconsideration, in major respects, again urges that the Commission should adopt United's version of the facts and law applicable to this proceeding. These contentions were fully considered and rejected in our Decision. United presents no new theory for its case or any reason for placing a different interpretation on the evidence of record. Nevertheless, we have again reviewed the record in light of United's pleadings and find no reason to depart from the findings and conclusions contained in the Decision.[3]

4. United's petition further relies on newly discovered evidence concerning the reliability of a former employee, Frank Del Vecchio, who appeared as a Broadcast Bureau witness. United asserts that Del Vecchio procured a Commission operator's license through fraud, that he is a convicted felon and a liar, that his unfavorable testimony was motivated by a desire for revenge against a former em-

and (3) a petition to amend specifying a new director and officer, filed and supplemented on November 7, 1975, by Community, which will also be granted.

[3] United also urges that the Decision misstates the Judge's determination that the offers of "roots," "incense," and "spiritual baths" did not constitute false advertising. 55 FCC 2d at 423. However, we agree with the Bureau that this inadvertent misstatement does not detract from the validity of the Commission's Decision, which established a basis for its findings of false advertising apart from the Judge's discussion of the matter in the Initial Decision, and which provided ample other, independent reasons for denial of United's renewal application.

ployer, and that his false testimony so poisoned the record that United was denied its right to a fair hearing.

5. In our view, United's contentions regarding the testimony of Del Vecchio must be examined in the light of all the facts concerning the record in this proceeding. The Bureau, in its Proposed Findings of Fact filed June 30, 1972, page 241, note 1, stated that it was relying on Del Vecchio's testimony only in those instances where it was corroborated by other evidence. The Judge's consideration of Del Vecchio's testimony was confined to one paragraph of the Initial Decision in which he discussed WOOK's ground system. No reference was made to Del Vecchio's testimony in any of the parties' exceptions or briefs. In short, Del Vecchio's testimony simply did not have any bearing on the question of United's responsibility for WOOK's violations of the Commission's technical operating rules. As noted in our Order denying United's Request for Stay, FCC 75-1045, released September 12, 1975, without regard to Del Vecchio's testimony, ample competent evidence exists to support denial of United's renewal application on this issue. In light of the limited context in which Del Vecchio's testimony was considered in this proceeding, it had no perceptible effect on the Commission's deliberations and there is no basis for finding that it tainted the Commission's Decision in any way. *Mesarosh v. United States,* 352 U.S. 1 (1956), cited by United, was a criminal proceeding where tainted testimony was heard by a jury. Moreover, in *Mesarosh,* the Supreme Court, citing *Communist Party v. Subversive Activities Control Board,* 351 U.S. 115 (1956), stated that an administrative agency, such as this Commission, can make an unbiased determination on the basis of a record shorn of tainted testimony without remanding the proceeding for a new hearing. Under these circumstances, we are convinced that no further consideration of this matter is required.

6. The Decision also concluded that, as the record existed at the time of the Initial Decision, Community was

qualified to be a licensee. Subsequent to the issuance of the Initial Decision, however, Community's bank loan commitment expired. Although Community submitted a new commitment which is basically identical to the expired commitment, Community failed to establish that its shareholders would pledge their stock in Community as required by the new commitment. Finding good cause for permitting Community to amend, *Brown Broadcasting Co., Inc.,* 12 FCC 2d 189 (1968), the Commission deferred final action on Community's application. Community's October 10, 1975, amendment contains pledges of the stock of all but one of its shareholders and a waiver by Community's bank of the requirement of a pledge for that one shareholder's stock. No objection to this amendment has been received.

7. Community's most recent bank loan commitment, however, expired on February 28, 1976. Instead of filing an amendment to its financial showing, Community submitted a letter showing a further bank commitment until 1977. In a letter dated March 11, 1976, United argued that Community should be required to amend its application. The objections raised by United's March 11 letter are well taken and Community's motion to strike United's letter will be denied.[4] The Commission can only approve applications which are in compliance with all statutory and other requirements. Requiring an amendment and the accompanying petition for leave to amend insures that the applicant is fully qualified and affords procedural due process by providing the parties an opportunity to interpose objections

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[4] Community's request for expedition which it filed in conjunction with its Motion to Strike is moot in view of our action herein. Its similar request filed in its January 20, 1976, Opposition to United's Supplement to its Petition for Reconsideration is defective inasmuch as it is an affirmative request for relief in a responsive pleading. See *Mid-Florida Television Corp.,* 55 FCC 2d 112, at 113 1975). Therefore, both requests for expedition will be dismissed.

during the hearing process.[5] At the present time Community's only loan commitment properly before the Commission expired on February 28, 1976. Community has not given an adequate explanation for its failure to amend, and we are convinced that it would be inappropriate for us to act on Community's application absent a petition for leave to amend and an amendment showing that Community is fully qualified to be a licensee of this Commission.[6] Consideration of Community's application will therefore be deferred for an additional 10 days and Community will be permitted to file such further amendments to its financial showing as may be appropriate. *Cf. Brown Broadcasting Co. Inc.*, 12 FCC 2d 189 (1968).

8. Accordingly, It Is Ordered, That the request for waiver of Section 1.106(f) filed October 8, 1975, by United Broadcasting Company, Inc. Is Granted, and that the petition for reconsideration and rehearing filed October 14, 1975, and supplemented on January 12, 1976, by United Broadcasting Company, Inc., Is Denied.

9. It Is Further Ordered, That the petitions for leave to amend, filed by Washington Community Broadcasting Co., on October 10, 1975, and November 7, 1975, as supplemented on November 7, 1975, Are Granted and the amendments Are Accepted.

10. It Is Further Ordered, That the requests for expedited consideration, filed January 20 and March 23, 1976, by Washington Community Broadcasting Co., Are Dismissed.

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[5] However, any objections that United might raise with respect to Community's financial proposal, which could have been raised at the time of the October 10, 1975, amendment, but were not, would be dilatory and subject to rejection on that ground.

[6] See *United Broadcasting Company (KBAY)*, FCC 76R-113, released April 23, 1976; *Kittyhawk Broadcasting Corp.*, 8 FCC 2d 217, 9 RR 2d 1293 (1967); and *Triad Stations, Inc.*, FCC 64R-540, 3 RR 2d 1064 (1964).

11. It Is Further Ordered, That the motion to strike United Broadcasting Company, Inc.'s March 11, 1976, letter, filed March 23, 1976, by Washington Community Broadcasting Co., Is Denied.

12. It Is Further Ordered, That consideration of the application of Washington Community Broadcasting Co. (File No. BP-17416) for a construction permit for a new standard broadcast station in Washington, D. C., Is Deferred for 10 days from the release date of this order to permit the filing of such further amendments as may be appropriate.

Federal Communications Commission

Vincent J. Mullins
Secretary

APPENDIX D

FCC 73D-7

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In Re Applications of

UNITED TELEVISION CO., INC. (WFAN-TV),
Docket No. 18559
File No. BRCT-585

WASHINGTON, D.C.
For Renewal of License

UNITED TELEVISION CO., INC. (WFAN-TV),
Docket No. 18561
File No. BPCT-3917

WASHINGTON, D.C.
For Construction Permit

UNITED BROADCASTING CO., INC. (WOOK),
Docket No. 18562
File No. BR-1104

WASHINGTON, D.C.
For Renewal of License

WASHINGTON COMMUNITY BROADCASTING CO.,
Docket No. 18563
File No. BP-17416

WASHINGTON, D.C.
For Construction Permit for New Standard
Broadcast Station

APPEARANCES

Paul Dobin, Roy R. Russo, Lawrence N. Cohn and *Roy F. Perkins, Jr.* (Cohn & Marks) on behalf of United Television Company, Inc. and United Broadcasting Company, Inc.; *Monroe Oppenheimer* (Surrey, Karasik, Greene & Hill) on behalf of Washington Community Broadcasting Co.; *Ramsey L. Woodworth* (Hendrick & Lane) on behalf of witnesses Donald W. Parker and Peter B. Lassotovitch; and *William A. Kehoe, Jr., Thomas A. Fitzpatrick, Joseph Stirmer* and *Michael Faber* on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE FOREST L. MCCLENNING

(Issued February 9, 1973; Released February 22, 1973)

PRELIMINARY STATEMENT

1. By order released June 13, 1969 and redesignation order released February 24, 1972, pursuant to the provisions of Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications were designated for hearing in a consolidated proceeding.[1] Except as indicated by the specified issues, the order of designation found Washington Community Broadcasting Co. (hereinafter Community) qualified to construct, own and operate its proposed new standard broadcast station; United Television Company, Inc. (hereinafter United) qualified to construct, own and operate Television Station WFAN-TV;

[1] The original order of designation dismissed, pursuant to its request, the application of Washington Civic Television, Inc. for a construction permit to operate on television channel 14 and by order released April 28, 1970 (FCC 70M-622) the application of Washington Community Broadcasting Company for such permit was also dismissed. These applications were mutually exclusive with the application of United Television Company, Inc. for renewal of license of Station WFAN-TV. Legal effect of their dismissal is to render moot issues 8 and 9(b), *infra*.

and United Broadcasting Company, Inc. (hereinafter United) qualified to own and operate Standard Broadcast Station WOOK. The issues as originally designated, modified and enlarged by subsequent orders are as follows:[2]

1. To determine whether the broadcast by Station WOOK of announcements which advertised articles such as "Conquer Roots", "Money-Drawing Roots", and "Spiritual Baths", or which offered to give three-digit scripture references to be used for "financial blessings", constituted false, misleading or deceptive advertisements.

2. To determine whether United Broadcasting Company, Inc. has taken reasonable measures to protect its listening public from false, misleading, or deceptive advertising over its facilities.

3. To determine whether Station WOOK has broadcast announcements or information concerning a lottery in contravention of Section 1304 of Title 18 of the United States Code, and of Section 73.122 of the Commission's Rules.

4. To determine, in light of the evidence adduced under Issue 3 above, whether United Broadcasting Company, Inc. and United Television Company, Inc. possess the requisite and/or comparative qualifications to be Commission licensees.

5. To determine the efforts made by United Broadcasting to ascertain the needs and interests of the areas served by Station WOOK and the means by which the licensee proposes to meet those needs and interests.

[2] Issues 1 through 9 are as numbered in the orders specifying these issues. Order FCC 70R-185 designates issues 10(a), (b) and (c) *infra* as issues (a), (b) and (c). The remaining issues are unnumbered in the various orders specifying these issues, but have been numbered herein for convenience.

6. To determine in the light of the evidence adduced under the foregoing issues whether a grant of the renewal of the license of Station WOOK would be in the public interest.

7. To determine which of the mutually exclusive applications for a license to operate on 1340 kc in Washington, D.C. would better serve the public interest, convenience and necessity.

8. To determine which of the mutually exclusive applications for a license to operate on Television Channel 14 in Washington, D.C. would better serve the public interest, convenience and necessity.[3]

9. To determine, in the light of the evidence adduced pursuant to the foregoing issues, (a) which of the AM applications should be granted, and (b) which of the TV applications should be granted. ([3] *supra*)

10. (a) To determine all of the facts and circumstances surrounding the operation of Station WOOK at Washington, D.C., under the management of United Broadcasting Company, Inc., with particular respect to the alleged departures from Commission Rules and Regulations and license authorization as disclosed by the Official Notice of Violation issued to the licensee in October, 1969, the responses thereto and related documents.

(b) To determine whether, in light of the evidence adduced pursuant to Issue (a) above, United Broadcasting Company, Inc., in the operation of Station WOOK, engaged in conduct which reflects such negligence, carelessness, ineptness or disregard of the Commission's processes that the Commission cannot rely

[3] As a result of the dismissal of the competing television applications, the comparative issue regarding Channel 14 has been mooted.

upon the licensee to fulfill the duties and responsibilities of a licensee.

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether United Broadcasting Company, Inc. possesses the requisite and/or comparative qualifications to remain a Commission licensee.

11. To determine whether the programming of Station WOOK has been meritorious, particularly with regard to public service programs.

12. To determine whether the programming of Station WFAN-TV has been meritorious, particularly with regard to public service programs.

13. To determine whether Washington Community Broadcasting Co., its principal, Dr. Phillip C. Brooks, or any of its other principals, failed to keep its application up to date as required by Section 1.65 of the Rules; and if so, whether the failure reflects adversely on the applicant's comparative qualifications.

14. To determine whether Washington Community Broadcasting Co. has sufficient funds available to construct and operate its proposed facility, and, in light of this determination, whether the applicant is financially qualified.

2. By order released July 24, 1970 (FCC 70-812) the Commission issued a Notice of Apparent Liability pursuant to Section 503(b)(2) of the Communications Act for the violations set forth in an Official Notice of Violation issued to United Broadcasting Company, Inc. on October 3, 1969. The following is specified therein:

> The inclusion of a forfeiture notice is pursuant to Commission policy and is not to be construed as in any way indicating what the final disposition of this proceeding should be. See *In WPRY Radio Broadcasters,*

Inc. FCC-650 noted at 23 FCC 2d 969. Indeed consideration of monetary forfeitures in this proceeding would first require affirmative findings in favor of United on the disqualifying and comparative issues. Such findings are of course dependent upon the facts as elicited in the hearing. In determining whether or not the imposition of a monetary forfeiture would be appropriate the Hearing Examiner should give consideration to the forfeiture of $7,500 paid by United at the time of its 1966 license renewal. See *United Broadcasting, Inc.* 4 FCC 2d 293 (1966). . . . For the purpose of determining whether or not repeated violations of the Communications Act or the Commission's Rules have occurred, official notice is taken of the Hearing Examiner's findings in *United Broadcasting Company, Inc., supra.*

This order further specifies the following:

That if the Hearing Examiner should determine that the entire hearing record requires a finding that the public interest would be served by the grant of United Broadcasting Company, Inc.'s application for renewal of its license for Station WOOK, he shall make findings of fact as to whether any willful or repeated violations of the Communications Act or the Commission's Rules thereunder (as specified in the Official Notice of Violation issued to United Broadcasting Company, Inc. on October 3, 1969) have taken place within one year of the issuance of this Memorandum Opinion and Order, and, if so, shall recommend to the Commission whether or not a forfeiture should be issued against United Broadcasting Company, Inc., in the amount of $10,000 or some lesser amount pursuant to Section 503(b) of the Communications Act.

3. The initial prehearing conference was held on July 22, 1969 and other conferences and hearings were held dur-

ing the period October 1969 through February 1972. The record was initially closed on February 1, 1972. Following release of the redesignation order the record was reopened and March 7, 1972 the parties stipulated into evidence the entire prior record in the redesignated proceeding. A further hearing session was held on April 10, 1972. The record was last closed by order released January 10, 1973. Proposed findings of fact and conclusions of law and reply findings of fact were filed by all parties.

Findings of Fact

United Broadcasting Company, Inc.

4. United Broadcasting Company, Inc., the licensee of Station WOOK Washington, D.C., has one class of stock, common voting stock. All of the outstanding stock is owned by Richard Eaton. The following are officers and directors of United:

Name	*Office*
Richard Eaton	President, treasurer, and director.
Pierre Eaton	Vice president, secretary, and director.
E. Carlton Myers	Vice president.
Clifton B. Holland	Do.
Morton Silverman	Vice president and secretary.

Mr. Silverman became an officer April 26, 1971. Mr. Holland became an officer October 1, 1966. Mr. Myers became an officer November 1, 1965. Pierre Eaton became an officer and director May 1, 1957. Richard Eaton has been an officer and director of United since its inception.

5. United owns all of the stock of United Television Company, Inc. and of Friendly Broadcasting Company. It owns the majority of the stock of Tele-Broadcasters, Inc. These companies and other subsidiary and related companies, as

listed below, are the licensees or permittees of the following broadcast stations:

United Broadcasting Company, Inc.[4]
WOOK, Washington, D.C.—AM
WFAN, Washington, D.C.—FM

United Television Company, Inc.
WFAN-TV, Washington, D.C.—TV

Friendly Broadcasting Company
WJMO, Cleveland Heights, Ohio—AM
WLYT, Cleveland Heights, Ohio—FM

United Television Company of New Hampshire
WMUR, Manchester, New Hampshire—TV

United Broadcasting of Florida, Inc.
WFAB, Miami-South Miami, Florida—AM

United Broadcasting Company of Eastern Maryland, Inc.
WSID, Baltimore, Maryland—AM
WLPL, Baltimore, Maryland—FM

United Television Company of Eastern Maryland, Inc.
WMET-TV, Baltimore, Maryland—TV

United Broadcasting Company of New York
WBNX, New York, New York—AM

Montgomery County Broadcasting, Inc.
WINX, Rockville, Maryland—AM

Tele-Broadcasters of California, Inc.
KALI, San Gabriel, California—AM

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[4] United Broadcasting Company, Inc. at the time of hearing also held a construction permit for television Station WJMY Allen Park, Michigan. Application File No. BAPCT-479 for assignment of this permit to WJMY-TV, Inc. was granted by Commission action of June 1, 1972. An application for assignment of license of Station WMET-TV Baltimore, Maryland is pending.

Intercontinental Radio, Inc.
KVEZ, San Mateo, California—FM

KECC Television Corporation
KECC-TV (CP), El Centro, California—TV

KIKU Television Corporation
KIKU, Honolulu, Hawaii—TV

Religious Programming of Station WOOK

6. The entire broadcast schedule of Station WOOK from 6:00 a.m. Sunday to as late as 1:30 a.m. Monday, except for the hours of approximately 1:00 p.m. to 6:00 p.m., is religious programs. Though there is fluctuation from week to week approximately 40% of these programs are broadcast live, the remainder being via tape. Most of the ministers who broadcast the programs purchase the time and in the case of transient ministers, payment in advance of broadcast is required. Certain programs as hereinafter noted, however, are broadcast on a sustaining basis.

7. Mr. Elmer Carlton Myers, Jr. has been the vice-president and general manager of Stations WOOK and WFAN-TV since 1965. As such, he directs the day-to-day operations of both stations. He is responsible for all phases of the operations, including programming, sales, engineering, promotion and traffic. He reports directly to Mr. Richard Eaton.

8. Mr. Richard Eaton, as president of United, follows the affairs of WOOK as closely as possible, has daily contact by telephone with the station manager and is at the station at least one afternoon or evening a week. He reviews the programming, sales and public service policies of the station. He discusses programming with Messrs. Myers and Holland and the religious broadcasts with Mr. Otis Von Blasingame, the station's marketing and promotion manager, on a regular basis. Initially, he satisfied himself of the acceptability of a minister for appearance on Station

WOOK by personally going to the church. From at least as early as 1960 he has discussed all religious programs with Mr. Van Blasingame, who is the son of a minister and frequently involved in the sale of broadcast time for religious programs. In 1965 he delegated to Messrs. Myers and Von Blasingame the responsibility of reviewing the acceptability of new preachers and supervision of the content of religious programs. Mr. Von Blasingame was assigned the duty of listening to all taped religious programs prior to broadcast to determine just exactly what was "thought would be in the public interest in accordance with the first amendment." The acceptance of programs by gypsies, palmists or root doctors, though purportedly religious, was banned by Mr. Eaton.

9. The live religious programs carried by WOOK include the services of various local churches carried by means of direct lines to the churches. Included are a one-hour program of the Bibleway Church, one-hour program of the National Presbyterian Church, half-hour program from the Deanwood Church of Christ, ¾ hour program of the St. John's Baptist Church, half-hour program from the Gospel Tabernacle, half-hour program of the New Bethel Church, half-hour program of the Northeast Holy Trinity Church and a series running at times a half-hour and at other times an hour from the New St. Paul Baptist Church, Ten-minute programs are originated in the studios of WOOK by Reverend Lattimore and by Reverend E. E. Peake, both Baptist ministers; Mother's Hour is a half-hour program of religious music originated in the studios of WOOK; Temple of Islam is a half-hour Black Muslim program; and Message of Hope is a 15-minute program broadcast daily by Richard Eaton. Programs of a number of itinerant ministers and other religious programs were also carried which led to specification of issues 1 and 3, *supra,* inquiring into the broadcast of announcements re Conquer Roots, Money-Drawing Roots, Spiritual Baths or offers to give three-digit scripture references to be used

for financial blessings. As developed on the record these were programs by ministers Thomas, Williford, Bonner, Allen, Williams, Belk, Franklin, Fleming, Cooper, Butler, Jefferson, Pryor and Dowell.

10. January 3, 1967 Community filed a petition to deny the application for renewal of license for Station WOOK in which it is alleged, *inter alia*, that the station had carried a number of "spurious religious programs" which under the guise of religion, offer listeners magic articles such as money-drawing incense, conquer roots and spiritual baths which will cure sickness, pay bills, bring estranged spouses together, give quick cash money, provide employment and homes and enable the users to win instead of losing in "the game." "The game" referred to as established by the record is the so-called "numbers game," a form of illegal gambling operating in the Washington, D.C. metropolitan area.

Numbers Game

11. Individuals who play the "numbers game" place their bets in any amount [5] with a "numbers writer." These bets are taken throughout the District of Columbia metropolitan area. The "numbers writer," excluding single action bets, receives a commission on all bets taken and in addition receives a 10% commission, paid by the bettor, in the event a number played hits, i.e., is a winning number.

12. The "numbers writer" turns in the bets he has taken to a specified location termed a "number drop" between the hours of 12:30 p.m. to 2:15 p.m. The "numbers drop" is operated by a "numbers writer" who receives a little higher commission than an ordinary "numbers writer" as he holds or "sits on" the work of 3 or 4 other writers who turn their respective bets into him. A "numbers drop" is usually located in a liquor store, restaurant, apartment

[5] Bets vary in amounts usually from 25 cents up.

or a private home. At a specified hour during the day a "runner" or "pickup man" arrives at the "numbers drop" to pick up the numbers slips and money bet. The runner's number of drops varies depending upon the size of the operation. At a specified time the "runner" takes all work collected to a "numbers office" where it is tabulated to determine "hits" and the commission due to the various "number writers." Numbers bets for that day are usually not accepted after between 2:15 and 2:30 p.m.

13. The head man or proprietor of the operation is called a "backer." He puts up the money to run the operation, pays off on winning numbers and handles all overhead such as rent, telephone, etc. The "backer" is usually also engaged in a legitimate business.

14. A bettor may play any three digit number with a combination bet being a bet on a three digit number to "hit" in any one of six ways. For example, 4 and 5 and 1 to hit as 145, 451, 514, 154, 415 or 541.[6] The phrase "playing it six ways" is also used to designate a combination bet. A three digit winning number is called a "straight hit" with the usual payoff being 600 to 1 which, less commission, pays to the bettor 540 to 1.[7] A bettor may play a parlay, in which a three digit number may be played by betting for instance a dollar on each of its six various two digit combinations. A leader bet is where the bet is on less than all six of the possible two digit combinations. ([6] *supra*) A "single action" bet is where the player bets one of the three

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[6] If the number bet on is 334, where two of the digits are identical, then there are only three different combinations that can be played.

[7] The proprietor of each operation puts out a "cut card" giving specified numbers on which he pays reduced odds, at times as low as 100 to 1. The numbers writers carry and exhibit these cards to the bettors. These are called "cut numbers" and are used when a number is being heavily played and has not won for too long a period of time.

digits, i.e., the first, middle or last digit—in this type of wager the odds generally paid are 8 to 1 plus the amount bet. Payoff may vary from the above depending on the particular operation.

15. Payoffs on the numbers game are usually made once a week, on a Monday, to all those who hit in the prior week. Some operations, however, pay off winners on the morning following the winning hit. The money travels down the hierarchy in the same manner it went up, i.e., from the "backer" on down to the bettor. These are the logistics of a carrier operation. There is also a telephone operation, which is now often used, with the writer who operates the drop calling in the bets to the numbers office.

16. In the Washington, D.C. metropolitan area, it is estimated there are 20 to 30 separate "backers" or owners who participate daily in numbers operations. On occasion "backers" may lay off bets with one another, each employs separate personnel, and each keeps the profits derived from his operation. Because of the number of independent operations, the term "numbers game" is considered by the Metropolitan Police Department to designate a type of game, rather than a specific or single game or operation.

17. The winning number each day is determined from the mutual prices paid on particular races at a specified track by use of the first digit to the left of the decimal point after totalling the mutual payoffs on a two dollar bet. All operators use the same number which is selected by five or six of the bigger backers getting together socially or by telephone and deciding which track and which races to use to determine the winning number. Formerly three races were used, one for each digit of the three digit number. Presently six races are used, the first digit to the left of the decimal point being that in the sum of the mutuals paid in two races. If no racing is conducted on a particular day at the track being used, all "backers" change to the same different track to get the winning number. If the scheduled racing

card at the track being used is cancelled because of weather conditions all bets go over until the next day and all "backers" act in unison in this policy. Bets made on a number after the cut-off time are carried over to the next day. The gambling population learns the winning number from the writers or by word of mouth on the street. The winning number usually is known at approximately 6:00 p.m.

18. Several publications are sold in the metropolitan area which allegedly aid the numbers player. One is a publication called "Sneaky Pete" which publishes the past performance of certain numbers and predicts future winning numbers. "Canary Bird" is a publication similar to "Sneaky Pete" in that it lists past winning numbers and predicts future winning numbers. These publications are sold at newsstands or stores in Washington, D.C. and there is no law prohibiting their sale. In addition, "Policy Pete's Mutual Number Dream Book," and "National Dream Book," two other publications relating to numbers, are sold in Washington, D.C. without prohibition. They link names, words, birth year and events to different three digit numbers and allegedly aid a player in the numbers game. The National Dream Book also gives interpretations for various dreams together with a three digit number for each dream.

19. The numbers game is a lottery with the mathematical probability of selecting a winning 3 digit number being 1/1000. The mathematical probability of selecting a winning 3 digit number twice in succession is 1/1 million. The possibility of this occurring three times in succession is 1/1 billion; four times in succession, 1/1 trillion; 5 times in succession, 1/1 quadrillion.

Reverend Frank Thomas

20. Reverend Frank Thomas, now deceased, formerly had a taped program broadcast by WOOK. He was an ordained minister associated with the First Christian Spiritual Church of America in Cleveland, Ohio. A broadcast by

Reverend Thomas, made over WOOK on September 5, 1966 contained, *inter alia*, the following:

> I want you to take the package that I am going to send you and place it in your tub on an even hour and I want you to repeat or read the 23 Section of Psalms and see what the Lord can do for you.
>
> To get the very special Hi John the Conqueror spiritual bath for that week, the very special blessed psalm to be used for prayer and meditation and two designated pamphlets, Prophet Thomas stated listeners should write to Prophet Thomas, P. O. Box 1228, Cleveland, Ohio, and to be sure to include a trinity love offering of $3.00 to help keep this broadcast on the air. Send all donations in cash or money order only.

No questions were raised by Mr. Von Blasingame or other WOOK personnel with reference to the content of this program or as to what made up the spiritual bath that would be sent.

Reverend Eli Williford

21. Reverend Eli Williford attended the Mount Canaan Spiritual Society, a religious seminary located in New York and received the degree of Doctor of Divinity. He had commenced preaching at the age of 13 or 14 and was ordained a minister at the age of 17. He is presently the minister of the Mount Canaan Spiritual Church in Washington, D.C. and Baltimore, Maryland and is Vice-Bishop of the Church. Reverend Williford has used radio in his evangelical work since approximately 1965, and has had programs broadcast on Stations WOOK and WSID in Baltimore. He discontinued broadcasting on WOOK in 1967. When he used the facilities of WOOK, his broadcasts were usually live and originated from the station.[8]

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[8] This program was broadcast Monday mornings between 12:00 and 12:30 a.m.

22. On September 6, 1966 Reverend Williford broadcast a program over WOOK which contained, *inter alia*, the following:

> For this week has been a blessed week. Last Thursday this I week I blessed you. Yes indeed. Then again on Saturday I blessed you. And I want you to listen to this. A lot of you don't believe I got it but I want you to know in this song that I got it. [singing] Yes I want you to know one thing. This Monday, September 5, Labor Day, that I have it. Somebody says, what you got? I don't have nothing but the naked real thing, to help you on your way. You know everybody is asking for something. I know I am. And I want to see 13 folks this Monday. I call it 'The Lucky Thirteen.' Thirteen folks will be lucky. If you are unlucky you are certainly not lucky. . . . I want to make thirteen folks lucky this day, Monday, September 5 starting at 7 o'clock throughout 1 p.m. If your bills are behind that's my job. I'm here to help you to get money to pay your bills. . . . You need some money to straighten the condition out. If you want some I want you to see me today starting at 7 a.m. through 1 p.m. Lucky 13. I declare before the sun goes down Thursday evening God will ride through the city.

To get the benefits of being one of the lucky thirteen, Phophet Williford told listeners it don't cost nothing. However, he added:

> Tomorrow night I want you to bring me three dimes. That's all I want you to do. Whatever your problem may be, come on and bring me three dimes tomorrow. . . . I want you to see me in private for your blessing. Somebody says how much does it cost. It don't cost nothing. But I'm asking you to give $10 to the cause of Christ. Amen. You drink that much up a week then you're too narrow minded to help yourself. You smoke

> $10 up a week. You go into the liquor store when you get off the job on Friday and spend $20. Lots of you spend $25 and $35 for some liquor and you're too narrow minded to get out and help yourself. I'm telling you the truth. That's why God don't bless some folks. They pay God too cheap.

23. Reverend Williford explained that the figure 13 referred to above represented 13 disciples who constituted a radio club from whom donations to keep the program on the air were requested and obtained and that the reference to three dimes represented the trinity, the dimes being a donation to the church. He testified that the program did not refer to betting or gambling in any way as gambling is contrary to the Pentecostal doctrine of his church. At one point he received a policy statement from Station WSID, (see paragraph 27, *infra*) which prohibited reference to the numbers game, roots, herbs, medals, oils, etc., but believed it did not apply to him because he did not preach the use of such materials.

Bishop M. Bonner

24. Bishop M. Bonner had a program carried by WOOK for some time but his broadcasts were discontinued in April 1969. At that time, United was visited by agents of the Federal Bureau of Investigation who referred to a grand jury investigation of Bishop Bonner's activities being conducted in Philadelphia, Pennsylvania and requested tapes of Bonner's broadcasts. Mr. Myers concluded that the tapes related to the grand jury investigation and for that reason terminated Bishop Bonner's broadcasts.

25. In a broadcast on September 5, 1966 Bishop Bonner requested listeners to come for a "John The Conqueror Root," and a "very special root," a "special money-drawing root." He stated that, *inter alia*, the "money-drawing root" could make one "the most successful person in the

game, . . ." and that while on a New Orleans waterfront last night "the spirit of the Lord touched me and put a straight scripture on my mind and I want those in Washington, D.C. that want to be blessed in a hurry that want to be blessed right now I want them to come for this straight scripture. This is a straight, straight— this is a straight scripture. Have you ever seen a straight line? This is a straight scripture." He further stated that also on that day he was passing out "a very special money-drawing incense." At several points in the program he implored listeners to come by to get the benefits of these items stating at one point as follows:

> Starting at 7:00 a.m. before you go to work Monday morning, come by. If you have to take off, take off. Don't go to work Monday morning. If you got to be late, call and say I've got to go to the doctor. I'm sick. The baby took sick. The baby fell down the steps. Grandmother took sick. Just anything happened, but come by 1443 G Street, N. E. before you go to work on tomorrow morning.

26. Mr. Von Blasingame testified he made it clear to Bishop Bonner before he went on the air at WOOK that he could not mention special roots or any other kind of root and following this broadcast told him that mentioning roots in religious programs was a violation of station policy. No questions were raised as to the remainder of this program. Although the above broadcast by Bishop Bonner violated Mr. Von Blasingame's express instructions, he was not taken off the air. The matter was thereafter discussed with Messrs. Myers and Eaton. (See paragraph 53, *infra*.) Bishop Bonner broadcast weekly over Station WOOK regularly for a period of three and one-half to four years between 1965 and 1969. He paid United approximately $250 to $300 per week for this time.

Written Guidelines

27. In 1968 Mr. Eaton's son, Pierre, who was associated with United's Station WSID in Baltimore, formulated a written policy regarding religious programs at that station. He forwarded a copy to his father. In consultation with Mr. Myers he decided that the document would be used to establish guidelines for Station WOOK's religious programs and it was given to Mr. Von Blasingame for distribution to and securing the signatures of the various ministers using Station WOOK. Mr. Von Blasingame was given the responsibility for interpretation and application of these guidelines. He thereafter decided that compliance with or adoption of part 5 would not be required as "the recitation of chapter numbers, et cetera, were as much a part of religious services as singing of a hymn . . ." The full text of the document as utilized by Station WOOK is as follows:

> POLICY REGARDING ALL RELIGIOUS BROADCASTS
>
> In connection with our agreement for the presentation of programming by you over Radio Station WOOK, Washington, D.C., it is understood and agreed as a material part and condition thereof that no programming of the following kinds will be presented:
>
> (1) Advocating, stating or suggesting that injury, disease, accidents, death or other misfortune will be avoided, mitigated, prevented or the impact thereof in any way eased by:
>
> (a) The use of herbs or tonics, or the consumption, application to the body, or other use of any vegetable, fruit, weed or other product of nature;
>
> (b) The possession, wearing or use in any way of bracelets, rings, scarves or any other article of jewelry or clothing;

(c) The possession or use in any way of pictures, books or other printed matter;

(d) The possession or use in any way of religious articles (including statutes and crosses) or symbols;

(2) Advertising of any of the foregoing items for the foregoing purposes.

(3) Advocating, stating or suggesting that any of the things or activities in paragraph (1) above will or may provide solutions to business, financial, marital, family or personal problems, or effect an improvement in any business, financial, marital, family or personal situation.

(4) Gift, prize or award by contest, lottery or similar arrangements involving chance and a winner or winners.

(5) Chapter numbers, paragraph numbers or song numbers except in connection with a recitation of the chapter, paragraph or a verse of the song in full.

It is understood that programming of the foregoing kinds if broadcast by Station WOOK could involve violations of the law and the rules and policies of the Federal Trade Commission and the Federal Communications Commission, with attendant losses for the licensee. Accordingly, it is understood and agreed that for each violation of the foregoing, you will pay the sum of One Thousand Dollars ($1,000) in liquidated damages to the United Broadcasting Company, Inc.

If this correctly reflects our agreement, please indicate by signing a copy of this letter in the space provided below and returning it to me.

Queen Mother Ruby Etta Allen

28. Queen Mother Ruby Etta Allen, an itinerant minister, broadcast programs over Station WOOK for "a few months." On February 23, 1969 she broadcast her program "Showers of Blessings" over Station WOOK on which she offered a "Seven Day Blessing Plan" for a donation of $10.50. In her broadcast, it was represented that during her first week in Washington, D.C. God blessed the people three times from the blessing plan and through her blessing plan had on Monday blessed "on the 25th Psalm" and "on Psalm 71 and 9 on Wednesday." The winning numbers in the numbers game on Monday and Wednesday of the preceding week were 250 and 719. For that week she stated "God has assured me that he would deliver you from 2 to 5 times within the next seven days through my blessing plan" and cited in support the above claimed previous two results.

Reverend J. Williams

29. On February 16, 1969, Reverend J. Williams, an itinerant minister, broadcast a program on WOOK in which he represented that he brought a "money blessing" the preceding week. He further stated that he has "a straight hit for success" and that "I blessed last week on Monday, Tuesday and Friday," . . . "I told children to ask God for $953; I told them to ask God for $905; and I told them to ask him for $301 and oh you were blessed honestly three times last week." He further represented that "I'm going to do the same for you this week here in Washington," . . . "I have a straight . . . I have a straight hit for success for Monday and Tuesday here in the city of Washington. . . . If you've never been helped see me this week because I have three hits for success for this week. I have three hits for success this week. . . . I have big money blessing for Monday, that is going to bless you in a hurry

that's going to give you big money. I said it. I guarantee it. I know what I can do and I know what I have done before. Experience is your best teacher and I am going to give you here in the city of Washington whatever you want. I'm going to give you a home. I'm going to give you a car. I'm going to give you a bank account. Whatever you need, whatever your concern is financially, I have your answer." The winning numbers in the numbers game on Monday and Tuesday of the previous week were 953 and 905. The winning number for Friday was 351 rather than 301, this having been the winning number on Wednesday.

30. On March 23, 1969 Reverend J. Williams (with John Little Jesus) broadcast a program over Station WOOK in which it was represented that "We blessed this past week. Yes, we did what we said we would do, we did it. And God blessed you through the 77th Psalm and the second verse, the 64th Psalm and the 5th verse, and also the 70th Psalm and the 2nd verse. We were good last week, but this week God knows we're going to do much better." As alleged in the petition to enlarge issues (Exhibit 3 thereto) the winning numbers in the numbers game on March 19th and 20th were 645 and 702. The number 772 was not a winning number that week.

Reverend James Belk

31. On March 30, 1969, Reverend James Belk broadcast a program on Station WOOK in which he offered "a seed of prosperity" and represented that "I told you how we would read our Psalm 60-62; Praise God, 62 and 6. I wanted you to read it, I wanted you to read it." The winning number in the numbers game on March 25th was 626. He urged listeners to write him and come see him personally.

Bishop R. Pryor

32. On March 23, 1969, Bishop R. Pryor broadcast a program on WOOK in which he said "My telephone number

is 547-3672. The first three figures is 547—My God, my God. And you take the mysterious 2 that was blessed through last week, if you place it on the 5 you'll see it's still working for you. You'll see its still working for you and the 74th and the 7th verse was a blessing to Washington, D.C. . . . I want you to call this number and don't fail to let it be a blessing to you, the number. Because you know that the 74th Psalm and the 7th verse was a blessing to you and the mysterious 2 is still working for you." The winning number in the numbers game in Washington on March 17, 1969 was 747. In a broadcast made by Bishop Pryor over Station WOOK on March 30, 1969, he represented that the "46th and the 5th verse was a blessing to you, using the mysterious 2 that I had been talking about all last week." The winning number on March 25, 1969 was 465.

Father P. H. Franklin

33. On June 1, 1969, Father P. H. Franklin broadcast a program on WOOK in which he represented:

> On the week before last, I told you, Sunday before last, I told those of you that would read with me the 30th Psalm the first verse. God knows I told you. And those of you that came to see me know I told you. And those of you that were down from Alexandria came here and gave me a fine donation and said Father, thank you for giving me the scripture to read. You know what I told you and I don't have to get on the air and say, I said this and I said that, for the world knows that they came to see me—it's a matter of record what I told you."

The winning number on May 24, 1969 was 031.

Reverend J. Fleming

34. In a broadcast on April 17, 1969 Reverend J. Fleming promised to send a "bible scripture that is a sure blessing" in exchange for a $2.00 "love offering." On April 28th, Mr. Michael Wilson sent Reverend Fleming $2.00 and received a card in return, which, *inter alia,* had a handwritten note "Read Psalm 38.2." In a broadcast on May 4, 1969, Reverend Fleming urged listeners in financial trouble to write for a "blessing" and promised to "rush you an answer" and asked that after God has blessed you send me $100. Mr. Richard Denney sent Reverend Fleming $3.00 and received a reply which contained, *inter alia,* a handwritten note stating 43 Psalm-1 verse and 51 Psalm-7 verse.

35. On June 8, 1969 Reverend Fleming broadcast a program on WOOK in which he promised a one way day deliverance to the many in need of a financial blessing. He represented that God blessed you last week, "I know that the 82nd Psalm and the 7th verse was a blessing to you. I know that the spirit of the lord went before you and made easy and successful your journey with the 31 Psalms." The winning number in the numbers game on May 26, 1969 was 782 and the winning number on May 24 was 031. He urged all listeners ". . . to get on your way right now and don't let nothing stop you and meet me today at the Belmont—at the Pitts Motor Hotel, 1451 Belmont Street. . . . I'm going to give you a message of deliverance and I tell you Monday evening God will have gone before you and made easy and successful your troubled journey."

Reverend John W. Dowell

36. In a broadcast delivered by Reverend John W. Dowell on March 16, 1969, it was asserted, *inter alia,* that ". . . many people have been able to pay off their bills by reading the Bible verses he [Reverend Dowell] has given them." Alleged testimonial letters were read in one of which the writer stated "I noticed that you gave everyone something

and told them to put it in their purse or pocket book and I'm just writing this letter to let you know that the purse fell on this past Tuesday and I was blessed with $270 for a 50¢ investment." In another, it is stated that "I followed your advice and used my purse on this past Tuesday according to the 3 wise men and God blessed me with $540. I would have been blessed with more but I had to read it three ways. . . ." A third letter made reference to "the special powder" he had given the writer and that "by using the pocket book as you told me" the writer had been financially blessed on this past Tuesday. He urged all that "needs a straight financial blessing" to meet him the following night. In a broadcast on May 11, 1969, it was again represented that "many people have been able to pay off their bills by reading the bible verses that he [Dowell] gives them." In an alleged testimonial it was stated "I was blessed financially for $135 . . ." In his broadcast of May 18, 1969 Reverend Dowell represented as follows:

> Listen, I don't care how far you're behind. If you make it your business to meet me tomorrow night you'll be able to catch up on this coming Tuesday because I declare to you I have a straight one way direct message of deliverance from the Lord that is for your immediate deliverance. Now in the event you don't know what direct means, you look in Webster's dictionary and Webster defines the word direct as being straight and that's what I'm going to give you. I'm going to give you one straight direct message and I declare everything will be all right for you on this coming Tuesday, not Wednesday or Thursday or one day later on in the week but Tuesday evening when the sun goes down everything will be all right for you.

Thereafter, an alleged testimonial was read which stated as follows:

> I just want to thank God for a man like you, because you have really helped me out of the rut I was in. When

> I first came to see you I was in debt up to my neck but thanks to you and the good Lord I am free at last. I have been to see you three times and every time I have received a straight financial blessing by using the scriptures that you gave me. The first time I came to see you, I was blessed for $135 for a quarter, and the second time I came I received $540 for a $1.00 investment. And the last time I was there I really hit the jackpot because I placed $10 where you told me to and the Lord blessed me with over $5,000.

Another alleged testimonial writer stated that "After the prayer I listened closely to what you were saying and when you began talking about John being in Pasmos and you looked away and saw him writing the Lord spoke to me and something told me to use the word writing. . . . I looked up the word writing and used it this past Tuesday according to the three wise men who found Jesus and the whole earth rejoiced. And I want to let you know that by using the word writing I was able to rejoice because I used it for fifty cents six ways and the Lord blessed me with $270." The word writing appears in both the National Dream Book and Policy Pete's Book. "3 Wise Men" is another numbers game publication. Another alleged testimonial read on the program stated that "I did receive a small sum of money the next evening because I was blessed with $54.00 for a 10 cent investment." Another letter stated that "the special drawing root you gave me sure did a powerful job" and Reverend Dowell commented "this is the most powerful root that's in this area."

37. On June 1, 1969 Reverend Dowell broadcast a program in which he stated as follows:

> Now I'm not trying to tell you that I'm the only one but, amen, but you ought to try the spirit sometime and see whether or not it comes from God. All these so called Bishops and prophets and elders running in and

> running out of town and don't have no church or nothing no where, hiding behind hotel doors, talking about, I go it, and just take your money and go back out of town and you don't see them no more for six months, and really I think it's a shame because we have a church here, amen, and we are anchored here in your city and we have roots here. And everything that we tell you or I tell you individually you can always come back and see me, amen, and I'll do the very best that I can for you. But, amen, these folks that are coming here and promise you and promise you a Rolls-Royce and you wind up with (about two words unintelligible) in your hand. Therefore, I'm saying to you, just stop and think for a minute. A few weeks ago, amen, someone came here and I don't know how much money they carried out of town. They promised you and those of you who are listening to me know who I'm talking about, I'm not I don't call no names, because I'm not fighting nobody but you all know there ain't nothing happened, amen, and they ain't been heard from since.

38. Thereafter, Reverend Dowell represented that this last Monday night he had given out an envelope at his service which had inscribed on the back a verse taken from the book of St. Luke, the 6th chapter, and the 38th verse and that God opened up the avenues of life on Tuesday and everyone who followed the special instructions were blessed with money to pay their bills. Alleged testimonials on the program referred to St. Luke 6:38 and that it was a monetary blessing. One of these alleged testimonials was as follows:

> Dear Elder Dowell; Praise the Lord and thank God for a wonderful man like you, because you have truly helped me to come out of my financial difficulties by reading the scriptures last week that you gave me on

last Monday night. I know that everybody who saw you was blessed last week because the envelopes that you gave us in your special line had St. Luke 6:38 printed right on it so there is no excuse for anybody to say it was your fault if they did not receive a blessing. I am not much at writing but I want the whole round world to know that I read this verse six ways on Tuesday and I thank God that I was able to shout the Victory Tuesday evening because St. Luke 6:38 brought me out and I know it was nothing but you and the good Lord that did it. I don't care what nobody says but you are the best that ever came to the city because I had been to so many pople and never received anything but after one visit to you I receivd a financial blessing the very next day.

39. The winning number in the numbers game on Tuesday, May 27, 1969 was 863, one of the six different combinations of 638, i.e., reading it six ways.

40. On June 15, 1969 Reverend Dowell stated the following in his broadcast:

> My God, if you come believing, I declare you're going to be receiving. The Lord spoke to my mind, amen, on this past week, as I was coming back down in the hills of Virginia, and I was like, amen, John the Revelator. I looked, amen, off into the element, and I saw a number, and then I was like John and then I looked again and I saw another number. And then the Lord spoke to my mind amen and told me to give you one for Tuesday and one for Thursday. So I'm saying to you once again, dear hearts, if you want to be in this great number that the Lord revealed to me, then make it a must in your life, put it on your agenda now, man, woman, boy and girl, young, middle aged or old, wake up and get up. And put this address down 1409 9th Street, N.W. and meet me there tomorrow night and my God

> you'll go away knowing that everything will be all right for you.

41. An alleged testimonial on this broadcast claimed that Reverend Dowell told her to read Psalm 37 and 6 and that it was a straight financial blessing; another stated he was blessed for $540; still another stated that "you told me to read Psalm 37 and 6 and God knows I would not tell a lie Reverend. It blessed me straight this past Tuesday." (The winning number on Tuesday, June 2, 1969, was 376.) Immediately after reading these allegd testimonials, Reverend Dowell again stated that he saw two numbers in the atmosphere, one for Tuesday, and one for Thursday. He then "urged," "beseeched," and "implored" listeners to come to him. Another alleged testimonial read on this broadcast stated "I have also had three straight hits since I came to see you and now I have so much money until I don't hardly know what to do with it." Reverend Dowell immediately thereafter invited listeners to come to his church so he could give them the message that the Lord gave him as he was riding along in his automobile for this Tuesday and one for this Thursday so they could be brought out in a financial way. Virtually all the aforenoted alleged testimonial letters stated contributions in various amounts were enclosed.

Other Programs Offering Numbers Tips

42. Other religious programs were broadcast over Station WOOK that, while they did not contain specific 3 digit scripture references that coincided with winning numbers, used language that would be construed as referring to "numbers" tips by listeners having familiarity with the "numbers" game. The tenor of these programs was similar to the aforenoted programs. Programs falling into this category were broadcast by Reverend J. W. Butler, Reverend L. Cooper and Reverend Clyde W. F. Jefferson.

Reverend J. W. Butler[9]

43. On March 30, 1969 Reverend J. W. Butler broadcast a program on WOOK in which he promised to "give Washington, D.C. one of the greatest financial blessings that has ever come to the city of Washington." He represented, *inter alia*, that he blessed New York three days straight and would do the same for Washington;[10] that he has something that's going to put food on your table and clothes on your back; that what he was talking about was not "something that's going to show 2 or 3 weeks from now but I say this very week while I'm in your city . . . that he was going to give it out straight and it's going to come the same way that I give it out . . ." that he was "only giving you one thing . . . I'm going to give to you a straight hit. . . . This Tuesday night I'm going to give it out in Washington. . . . I'm not going to tell you to put restrictions on it . . . but do what you want to with it. . . . You can come out with $50,000." There was repeated use of the word "straight" throughout the broadcast and Reverend Butler informed listeners where they could see him.

Reverend L. Cooper

44. Reverend L. Cooper broadcast programs on January 12, 1969, May 4, 1969, May 25, 1969, and June 8, 1969. In the January 12th program he asked for $10.00 donations and he would send "one of my white envelopes with a special prayer to be put over the head of your bed and a piece of green garment to carry around with you and my Bible scriptures for this week." This followed a statement

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[9] The program was announced as being that of "Bishop Butler" at its opening and closing, though throughout the title "Reverend" was used.

[10] The entire program was devoted to his ability to give out financial blessings for Washington, D.C. "for two days, Tuesday and Wednesday of this week."

that "you will be blessed and blessed big like you never been blessed before and the best part about it you will be able to pay up your back bills." Ms. Kathleen Gregory sent $10.00 to Reverend Cooper and received in return a piece of green cloth and 3 printed pages. One of the pages consisted of, *inter alia*, 3 digit scripture references with the following notation:

> This material is to be used for your spiritual strength only. It is not for any other purpose. It is definitely not intended for any gambling purpose whatsoever.

One reference was for "trouble," one for "love" and one titled "In need of God's dirct blessings, spiritually and financially."

45. In the May 4, 1969 program of Reverend Cooper, a purported telephone conversation testimonial was broadcast stating, *inter alia*, "Yes, well, that's why I gave you Bible scriptures. You see the scriptures that I've chosen from the Bible that's why I like my followers to read the scriptures that I have chosen from the Bible for them to read. And God have blessed you financially, through my Bible scriptures. He stated to another testimonial caller "Yes, yes. The white envelope that you received you received . . . brought you from a mighty long way. Yes, you were three months, your rent was three months in arrears. The constable was already on you. Yes and you owed two payments in arrears on your car. And you had other small bills. And you took that white envelope with the piece of green garment and the prayer and God has delivered you and you paid up all your back bills."

46. In his broadcast of May 25, 1969, a purported telephone testimonial credited the green cloth and scripture references given in the white envelope with the return home of a son and immediately thereafter they were blessed by reading the Bible scriptures "two days in a rotation." To

another testimonial phone caller he stated: ". . . Yes, yes, God bless you. Your mortgage were exactly three months and two week in arrears and after you were in to see me and received this white envelope and my Bible scripture God blessed you before I left Washington, D. C." Replying in another telephone conversation he stated "You wants to send in a donation for the Temple. Well that is entirely up to you. Some send ten, some send twenty, some send fifty, some sends a hundred. God bless you. Yes, I'll send one of my white envelopes." He thereafter stated that "this week my white envelopes will be so straight until a fool cannot err."

47. In his June 8, 1969 broadcast, Reverend Cooper stated he would send "one of my white envelopes, Bible scriptures and a piece of green garment" to those who wrote and that the writers would be delivered five hours after receipt of th letter. "Yes you will be able to pay up your back bills and meet your obligations five hours after you receive this white envelope that I am mailing out this week. It will be straight, I'm not going for no crooks and turns. . . ." He solicited $10 donations "for the upkeep of our program and the upkeep of our Temple, and I will mail you one of my white envelopes and when you set down and write me a letter and place your donation of $10 on the inside, make sure you send a 30¢ stamp and 6¢ stamp. . . ."

Reverend Clyde W. F. Jefferson

48. In a January 12, 1969 broadcast on Station WOOK Reverend Clyde W. F. Jefferson invited listeners to attend a mystical meeting on Tuesday ". . . because I have what you've been praying for for Wednesday straight. . . ." Thereafter, he represented that:

> Yes, I have what you're praying for. And anyone who have come to one of my meetings know that I give it straight just like it is. My stuff hops out just like the horse run, just like on a fast track. So you know that you can roll something up right away and point it away from you. I say but you just come. I D-double dare you doubting Thomases, you doubters, you doubters did not come to my last two meetings and wished you'd came and knowing what I gave and it jumped right out the next day.

Following this at several points he continued the representation that for those attending his Tuesday meeting he had a blessing for Wednesday ". . . a sure straight blessing."

49. In a broadcast on March 16, 1969, Reverend Jefferson made the statements "God's blessings are straight, straight from the Bible;" "I know what's coming for Monday. If you want to get on the straight bandwagon because a cow, a cow;" "also everyone will receive one of my free prayers with the special psalm blessing;" and "see me for your special release for Monday and for Wednesday;" "if you want to get on the straight bandwagon;" "everyone will receive one of my free prayers with the special psalm blessing;" "see me for your special release for Monday and for Wednesday." He further stated that "I will also have the money drawing lucky handmade especially for you . . . thousands of happy users and "I know my roots too. I say I know my roots too."

50. In a broadcast on April 27, 1969, Reverend Jefferson's talk included, *inter alia*, the following statements:

> (a) Yes, you this coming week, can do yourself into the figure—I say—if or a man's size stake I cheerfully admit I, I said, not that something is stacked against you, I say that but for the track information it's unbeatable. It's true, I have the answer for next week.
>
> (b) Yes, God's children at 1415 U Street, N.W. I your Reverend Jefferson is waiting upon you. Yes, I have the message just for you for this week. I've been

praying for you. I say I don't want you to put more than you can afford on it. I said because the Big Boys have spies. Hah, hah, hah, hah. This is for you, my special precious few.

51. In a broadcast on June 8, 1969 Reverend Jefferson represented that "Just as I gave two winners last week, I'm going to give another one. I say yes I'm going to give another one." His talk, thereafter, included the following:

(a) I say results, results Washington, Maryland, Virginia. I've got something awful good and it's straight so if you don't come and get it, just blame yourself. I say just blame yourself if you miss it this week. Because I got it. You can pay your bills, enjoy a new car, a home of your own, along with health, happiness and success. Blessings, blessings, blessings and more blessings. . . .

(b) Yes, many people received my special release on last week, my special prayer. I say for Monday, for Monday. I want you to have good, good presents before the sun goes down Monday, and also Wednesday and Thursday, don't be left out. Because I have a message. I have a message. I have a message for you, you and you. For those in need. Quick action for those who want some money right away. Help now, help now, powerful secret money blessings. Do you really, really, really, want a blessing? You better hurry today, today, today because I'm giving it only to a limited number of people.

Revenues Derived by Station WOOK from Religious Broadcasts

52. Station WOOK did derive substantial revenues from the broadcasts of religious programs during these periods. The total for all paid religious broadcasts during the year January 1, 1969 to December 31, 1969 was $89,478. The

following is a breakdown of the 1969 revenues from eight of the aforenoted ministers shown by the financial records of Station WOOK:

Minister	Number of broadcasts January-June	Number of broadcasts July-December	Total
Rev. J. Williams [1]	19	0	$2,280
Queen Mother Ruby Allen [2]	29	25	2,030
1	8	0	[3] 68
Father P. H. Franklin	15	17	3,200
and Bishop J. W. Butler [4]	0	12	[5] 144
Rev. James Belk [6]	15	0	1,650
Rev. John Dowell	40	34	11,040
Bishop Pryor	22	21	3,440
Rev. J. Fleming	17	10	1,580

[1] Reverend J. Williams is an associate of Reverend Bonner and the amount set forth constitutes the amount reflected on the company's books for Reverend Bonner. Accordingly, all or only a portion of the total may reflect use of the facility by Reverend J. Williams himself.

[2] Queen Mother Ruby Allen was associated with or substituted for Dr. M. L. Coleman. The figures are those which appear for Dr. Coleman on the company's books and also include entries under Universal Triumph Church. Thus all or only a portion of the amount shown for Queen Mother Ruby Allen may actually reflect broadcasts by Queen Mother Ruby Allen herself.

[3] This total is for 8 spot announcements at the rate of $8.50 each.

[4] Bishop Butler was associated with Dr. P. H. Franklin. The amount shown for Dr. Franklin constitutes the totals for both Dr. Franklin and Bishop Butler.

[5] This total is for 12 spot announcements for Bishop Butler at the rate of $12 each.

[6] Reverend Belk is an associate of Reverend Lofton and the entries are those on the company's books for Reverend Lofton. Thus all or only a portion of the total shown for Reverend Belk may have been used by him personally.

Supervision Over Religious Programs and Revised Policy

53. Responsibility over the broadcasts of religious programs over Station WOOK during this period, as shown in paragraph 8, *supra,* rested primarily in the general manager with the marketing and promotion manager having direct responsibility for review of content. As is also noted the owner Mr. Richard Eaton regularly reviewed with them all phases of programming and particularly religious programming with the marketing and promotion manager. None questioned any of the ministers with respect to the aforenoted claims of financial blessings other than for inquiry of Queen Mother Ruby Allen as to what her seven day blessing plan was. Mr. Von Blasingame required Reverend Cooper to cease his reference to his Blessed Hand and cautioned Reverend Jefferson for his reference to a money drawing lucky hand. The references to baths and roots by Bishop Bonner, Reverend Thomas and Reverend Jefferson were permitted by Mr. Von Blasingame after consultation with Messrs. Eaton and Myers as they concluded the references amounted to a means of bringing worshippers closer to God and could not be interpreted as attributing power to the roots themselves. All three professed up to this point, a complete lack of knowledge of the numbers game including its mode of operation, the odds involved and the terminology used. All testified that they had no concept of the aforenoted broadcast statements having any relation to the numbers game until after the filing by Community on June 23, 1969 of a petition to enlarge issues alleging that these ministers were representing in their broadcasts that they had given out winning numbers in the past and listeners who came to see them or wrote them could also obtain winning numbers for the future.

54. Though the reference to or announcements which advertised articles such as roots and spiritual baths were discouraged, they were not prohibited as above noted so long as it was believed the articles were viewed by the ministers as instruments of God rather than as inherently

capable of working benefits. These were considered as having the same functions and significance within the religious doctrines of these ministers as those attached to the use of such articles as holy water, rosaries, images, medals and medallions under other doctrines and faiths. This concept was adopted in the belief of it being consistent with the provisions of the first amendment to the constitution of the United States as they relate to the broadcast of these programs. Station policy in this area, therefore, was to discourage references to the articles such as roots and spiritual baths noted in Issue 1, but to be guided by the principle of non-censorship in cases where the cited article appears to be a means of achieving closeness to God rather than an end in itself where the references to it are a part of the preacher's gospel.

55. Following filing of the petition to enlarge issues on June 23, 1969 by Community, by order released October 27, 1969, Issue 1 was modified to read as shown *supra* [11] with the issues also being enlarged to include Issues 3 and 4. (See paragraph 1, *supra.*) The petition had attached as Exhibits 1 and 3 letters from the Government of the District of Columbia, Metropolitan Police Department, signed by the Chief of Police outlining the operation "of the lottery commonly known as the 'numbers game'"; giving the names of cards or "tip sheets" giving the winning numbers from the first of the year; and offering to make a member of the Gambling Section available to testify as an expert if desired. On the day following the filing of this petition Mr. Myers and counsel for United met with the commanding officers of the Morals Division and of the Gambling Section of the Metropolitan Police Department and as a result of this meeting submitted a list of questions

[11] Issue 1 originally was as follows: To determine whether the broadcast by Station WOOK of announcements which advertised articles such as "conquer roots," "money-drawing roots," and "spiritual baths," constituted false, misleading or deceptive advertisements.

designed to determine the knowledge of the Police Department concerning these broadcasts and the position of the Department with reference thereto. In response United was informed that the Department had been aware of these broadcasts over the past few years, that neither the sale nor possession of the "tip sheets" referred to or giving the winning numbers is a violation of District Law, that it was not the intent of the Department or Chief of Police to endorse the views of Community, and that the only way the Gambling Section of the Metropolitan Police Department would become involved in this matter would be to furnish witnesses to testify as experts on gambling information if summoned by the Federal Communications Commission. A number of members of the Gambling Section had heard these broadcasts and construed the three digit scriptures cited as referring to numbers in the numbers game. No action has been taken by the Metropolitan Police Department against either the ministers involved or United as a consequence of these broadcasts and none is contemplated. The broadcasts have been discussed by members of the Department and the question of their legality apparently "batted back and forth" with no real conclusion being reached.

56. Mr. Eaton also instructed Mr. Myers and Mr. Von Blasingame to discuss these charges with the ministers involved and Mr. Von Blasingame did discuss them with each of the ministers then available. All denied the charges and it was ultimately decided that it would be extremely difficult to prove what had happened in the past. It was concluded that, since management believed the duty of the station was one of taking measures to protect its listening audience, attention would be directed to taking measures for future protection. Each of the ministers, accordingly, was informed that the promises of financial blessings by three digit Bible references to chapters and verses were banned as to all future programs. It was further concluded that the station has no responsibility as to what transpires

at the religious services or as a consequence of contacts either in person or by mail arising out of these broadcasts. It was, therefore, decided that the fact that ministers were known to mail scripture references in response to written requests would not be grounds for dropping their broadcasts since United "continues to believe that giving scripture lessons is a proper ministerial function."

57. Moreover, as to the past programs it remains the conviction of the station management that, if in fact the ministers were claiming success at numbers predictions, their essential motivation was only indirectly related to gambling, their essential motivation for claims of divine assistance in the matter of monetary gain being to demonstrate their ministerial power in the competitive arena of evangelism. This past conduct, accordingly, was viewed not as deceit but as puffing to increase the size of the minister's flock. In essence, it was concluded that in view of the station's belief that nothing illegal had been done, the best course was to treat affected ministers in the manner of advertisers making exaggerated claims for their merchandise, i.e., to order those to stop in future.

Religious Programs Involving Numbers Game References Broadcast Subsequent to Adoption of Revised Policy

58. Under this revised policy, on February 8, 1970 Reverend Dowell broadcast a program in which he requested listeners to send him a sacrificial offering of three, five or ten dollars to help maintain the radio broadcast and for the "upkeep of our building fund." In return he promised to send a message concerning which he stated at various points the following:

> (a) I have, amen, by the grace of God, a message of importance that I want to convey to your mind and dedicate in your being that will be your bridge over high waters this coming Wednesday. Did you hear what

I said radioland? I have a message that I want to send you that is for your deliverance this coming Wednesday.

(b) All you have to do is put this number down, amen, P. O. Box 2203 in the city of Washington, D.C. and write me tonight. Don't wait until tomorrow, amen, because if I'll have your letter in the morning, Tuesday you'll have your answer in your hand and Wednesday you'll be able to do what you want to. My God, it's your thing all you got to do is do what you want to do with it.

(c) My God, I have a message for you, that's going to, amen, upset the city. It's going to be more powerful than the hydrogen bomb. My God, because the hydrogen bomb tears down but this is going to build you up. This is going to build you up what you make in your pocket book. This is going to put food in your ice box, amen, and money deep down into your pocket.

(d) And God, promised me, amen, that everybody that will write me tonight, and let me hear from you, that Wednesday will be a day of victory in your life.

(e) Just write me and say, Reverend, I need help and I want that message for Wednesday.

(f) This message, that I have for you is for this Wednesday.

(g) Therefore, I say get your letter in the mail tonight and you'll have my answer back Tuesday, and Wednesday, my God, will be a victory day in your life.

59. On February 9, 1970 Mr. Richard Denney sent Reverend Dowell $3 and received in return a packet of incense, a miniature key, a card and a mimeographed sheet. The card contained, *inter alia*, the following: "Read & combine with prayer. Psalm 90 Verse 6, Psalm 79, Verse 3." The mimeograph sheet contained, *inter alia*, the following:

"Read Psalm 95:7; Psalm 60:4; Psalm 83:9." The general manager of Station WOOK testified that this program was not a violation of the revised policy.

60. In a broadcast on February 1, 1970 Reverend Sam McClure made reference to a "dream" in which he saw "a great big train and it was loaded down with money . . ." and he saw the conductor who had something in his hand and God told him to "tell every child of God that you come in contact with, what you seen in the conductor's hand." At one point he stated "the money train that's going to roll into your city on Thursday" and at another "the money train that's going to pull out of your city no later than Thursday." He urged his listeners to write and send to his Detroit, Michigan address a $5.00 donation and self-addressed stamped envelope if they wanted "to step on board this money train no later than Thursday. If you want God to stop by your station of life this week no later than Thursday." The broadcast was devoted almost exclusively to appeals for donations from people "that needs some money, that needs money in a hurry" in return for "what the conductor had in his hand" which would "reap one of the greatest harvests of his rich blessings that has ever been bestowed on the city of Washington, D.C."

61. On February 2, 1970 Mr. Richard Denney mailed an air mail special delivery letter to Reverend Samuel McClure with a $5.00 bill and a self-addressed stamped envelope. Mr. Denney received in return a letter which contained the following:

> God showed me a vision, and in this vision as I lay there. I saw a long *Train*, and on the train there was an old man, who was the conductor of the train and in his hand he had a *Key*. He was looking out the window at the big lake or river the train was crossing. God told me through this dream or vision, it would be a blessing to you. For your Bible lesson this week, may it be uplifting to you mentally, spiritually, and above

all that may be said, may it be the greatest financial blessing of your entire life. Read I Kings 10:2-17 and Isaiah 6:1, 7-13.

At the bottom thereof the following appeared: P.S. Pray for Walter and David *RAIN*

62. The National Dream Book has the following numbers corresponding to the words contained in Reverend McClure's letter: Train 296; Keys 429; Walter 672; David 630; and Rain 680. Policy Pete's Mutual Number Dream Book has the following numbers for these words: Train 314; Keys 185; Walter 637; David 223; and Rain 535.

63. Thereafter Mr. Denney received from Reverend McClure the following solicitation:

> If you have a desire to pay up all your *Bills* before spring of the year sit in, I want you to read this letter very very carefully, and then ask yourself this very important question. How many times did you think you were a (Winner) and only found yourself on the losing end of the *stick*? That old Devil got busy (Stopped) and blocked your way. Most of you know just how it feels to be a loser. How would you like to be a (Winner)? Now if your answer is yes, Rev. Sam I want to be a winner, I am tired of coming close and missing out. Blessings just pass you by and being on the losing end all the time. Rev. Sam tells me just how I can help myself. For I really really need some *Money* to pay up my Bills. Now listen this is all you need to do just let me send you (ONE THING TO PLAY THAT WILL MAKE YOU A WINNER). This, that I send you, take it to the Market Place and you will (Catch it) for enough money to pay up all your bills. You can't afford to wait. DON'T DELAY, DO THIS NOW. If you want to be a winner.

> Enclosed you will find a self-addressed envelope, send $10.00 today and your blessing will be right at hand on the next day after you receive my letter.

Mr. Denney sent a $10 bill and received in return a letter from Reverend McClure giving the scripture references "Exodus 40:17, 18, and 21st verses Philippians 3:13, 14 and 19 verses" and the postscript "P.S. Pray for Clyde and Mary." The National Dream Book shows number 541 for Mary, Policy Pete's Dream Book shows 824. Neither contains a listing for Clyde.

64. Following receipt of the letter noted in paragraph 34, *supra,* Mr. Denney began receiving letters from Reverend Fleming. On or about June 9, 1969 he received one soliciting him to join Reverend Fleming's "Five Week Success Plan" for a donation of $3 per week and "you will receive Rev. Fleming's special selection of Bible verses. . . . I guarantee you that God will bless you through the Five Week Success Plan with the money you need. If you work with the blessing plan and follow instructions you can not lose. . . ." In return for $3.00 which Mr. Denney sent, he received a "Prayer to Saint Lucy" at the bottom of which were the handwritten words "baby, eyes." In response to a similar letter Mr. Denney received by letter dated January 15, 1970 a letter with the handwritten name ANN across the bottom and by letter postmarked February 5, 1970 he received another letter in which "love" was handwritten at the bottom. In the National Dream Book babies has number 601, eyes number 337, Ann number 378 and love 019.

United's Position That Programs Were Legitimate Religious Expressions

65. United does not now question that the foregoing ministers did in fact make reference to the numbers game in the programs broadcast. It urges, however, that they were legitimate religious expressions. Samuel Z. Klausner, director of the Center for Research on the Acts of Man and

Associate Professor of Sociology at the University of Pennsylvania testified in support of this position. In his view, in making numbers references, these ministers "consider themselves as having some particular relationship to a power beyond us and they provide the occasion for this power to . . . speak through them." They believe "that somehow and perhaps in a miraculous way . . . they are behaving at the dictates of this power beyond them and that the numbers that they might write down will have some particular value like fortune to them, so they are in a sense representatives of this power." That, like the Old Testament prophets, they do not themselves claim a power—here to give a winning number—but rather believe that "God can speak through them." He classifies the ministerial functions of the Reverends Bonner, Williford and Thomas as primarily prophetic and "Typical of prophets, their claim is not that they possess magical powers, but rather that they enjoy special insight into the events of the world. In this case, the insight is related to the knowledge of religious texts. The power that they interpret is conceived to be a spiritual one acting in its own mysterious ways."

66. In such cases as the testimonial letters to Reverend Dowell referring to such mathematically improbable events as three straight hits from his scripture references, it is his opinion that, if the letters are legitimate, the letter writers are probably lying and "Reverend Dowell . . . is flushed with the success and does not realize that the probabilities are so low and really thinks God did it for him this time." In response to inquiry as to why worshippers would write such testimonials, he responded "that would be an interesting question to explore psychologically," not being at all limited to those seeking Reverend Dowell's blessing thereby or indeed even these churches. It is a characteristic also for example of the Christian Science Church, as illustrated by the letters of testimony as to healing published in the Christian Science Monitor regularly.

67. Professor Klausner noted that the ancient practice of using gambling within a religious context "usually emerges at some point where there is a great deal of uncertainty about the outcome of events and people would prefer to place this outcome in the hands of God," as exemplified by various religions which have used the casting of lots to determine social actions. It is his view that here this emphasis on lots in religious symbolism is exemplified in the references of these ministers to luck and the number thirteen as "Religion is one expressive form in which meaning is given to situations of uncertainty. Thus, one finds the casting of lots in The Book of Esther."

68. If required to stop these appeals, he believes these ministers "would go right on using something else" as they generally are fundamental in the sense that "all religions in order to gain social attention have to speak to matters of concern in their current society." And here, though "the numbers business itself is not crucial to what they are doing," it is crucial to them in drawing an audience to their programs. "If you have a community in which their central anxieties are focused around economic problems . . . the religious group speaks to these issues of anxiety," so these preachers speak to the poor of financial salvation. In short, it is his view that the fact that numbers are involved in no way detracts from the identification of these sermons as religious expression. To the contrary, it is typical as based on his visits to such churches "You could go in on a Sunday morning to any of a dozen storefront or Pentecostal Negro churches and procure the same kind of material. This reflects the current religious culture of the lower income Black groups." He states the role of the minister is unaffected if he never in fact gives out a winning number though every week he claims to have done so as "he never predicts the number. He allows himself to be the channel" whereby they are divinely transmitted. Accordingly, "empirical validation in that sense would not be necessary. We have many, many instances of religion deal-

ing in real world events where they make statements about future events and those events don't come about and that hardly shapes the faith of the communicants. Some of the prime examples are in the apocalytic sects that will talk about the end of the world." It is his belief, however, that in this case the success rate for the preacher is probably in fact higher than mere odds would suggest because more often than not the minister gives different scripture references to different parishioners. For instance, where letters were used with chapter and verse being given as shown here "they provide each respondent with two three-digit numbers, so that if . . . they get 500 people writing in they are sure that in one of those cases they got a winner." In such a case, the divine blessing comes through the selection by God not of the winning number but of the winning person —i.e., "The intercession of the divine guidance would be the selection of some particular individual with some particular letter . . ." i.e., "God will choose one of you."

69. Turning to particular ministerial references, Professor Klausner's testimony as to Bishop Bonner's advice to parishioners that they come to his service even if they must make false excuses to get out of work (paragraph 25, *supra*), is that this in no way detracts from the religious legitimacy of the broadcast. While on its face such a recommendation is "deviant behavior" for which a minister might be faulted by his colleagues, any impropriety which might otherwise attach to such a ministerial statement can be excused on the ground that Bishop Bonner, the person, as distinct from his ministerial role, is fallible.

70. As to the efficacy of such articles as Money-Drawing Incense, Conquer Roots and Spiritual Baths, referred to in these broadcasts, his position is it cannot be understood or analyzed meaningfully, in the context of everyday language. He states "The religious and the secular use of language should not be confused. It would be an error to interpret religious statements as if they were intended to have the

objective empirical reference that those words might have in everyday language. Religious language is a poetic or mythic form. While bound by the culture in which it occurs to use everyday words, religion uses these words in a metaphoric sense to depict a supra-empirical reality. . . . Religious expression is neither false nor meaningless but an attempt to express attitudes about the meaning of life that escape the objective literalism of everyday referential language. . . . The use of material objects as tokens for these meanings, sometimes in association with prayers, has a long tradition." He gives as the Roman Catholic analogue the healing baths of Lourdes. Similarly, the use of roots as material religious symbols is prevalent in the religions of the South Sea Islands, here again bound with the cultural addenda relevant to the particular sect, as "money-drawing root" or "conqueror root," a symbol frequently encountered in other Black churches "in this particular cultural setting" but not elsewhere. In short, the function of these objects is essentially sacramental and the test applied by United, as stated by Mr. Eaton, was that so long as the minister promises that the Lord will help, that the article is an instrument of the Lord, it is no different than a rosary or other symbols used in the various religions.

71. Professor Klausner concedes that the programs involving the numbers game statements would have a tendency to encourage listeners to play the numbers game in order to receive benefits similar to those described by the letter writers; that the numbers game is to the economic disadvantage of the participants to play it because of the odds involved; that the broadcasts insofar as they related to the numbers game, were not part of the creed of the religion that these ministers were preaching; and "that there are definable and discernible deleterious social consequences to gambling in general in society." The claims by these ministers to have given winning numbers in the past and the ability to give successful tips for the future were, in his experience, peculiar to the Station WOOK broadcasts.

Issue 3 re Lottery Law

72. Issue 3 is directed to a determination whether broadcast of the aforenoted religious programs containing material as to the numbers game was in violation of Section 1304 of Title 18 of the United States Code, the provisions of which are carried forward in Section 73.122 of the Commission's Rules. In *FCC v. American Broadcasting Company, Inc.* 347 U.S. 284 (1954) the Court noted that Section 1304 is one of five sections which constitutes Chapter 61 with Section 1302 prohibiting the mailing of lottery tickets and related matter involving a lottery, gift enterprise, or similar scheme. It ruled that for purposes of interpreting the statute it should look to whether the postal lottery laws preclude the mailing of advertising for the type of broadcast program involved. Because of this ruling United called as an expert witness on Section 1302 Mr. Saul Mindel who was, prior to his retirement, from the Post Office Department, in charge of the Mailability Division of the Office of General Counsel as Assistant General Counsel.

73. In construing Section 1302 the Post Office Department (now the United States Postal Service) considers the ban on mailing of various kinds of material "concerning any lottery" as constituting a prohibition on the mailing of any information concerning the lottery regardless of the form the communication takes. Lottery paraphernalia, statement of odds paid after the event, predictions of winners, predictions of odds and announcement of the winners are all considered mailable. If designed to promote a lottery mailing of the names of persons holding winning tickets is prohibited as being within the prohibition on mailing of any list or partial list of prizes awarded or drawn in a lottery. If incidental to an otherwise newsworthy account in a news publication, however, it is mailable. The exclusion of odds on upcoming events from the prohibition of Section 1302 is based on the fact they are not prizes. The exclusion of paraphernalia is based on the decision of the Supreme Court in

United States v. Halseth 342 U.S. 277 in which it ruled that punch cards in transit do not at that time relate to a particular, existing lottery, no matter what the use to which they will be put thereafter. Similarly, books on how to win at gambling games are not banned for the same reason, i.e., they do not give information concerning a specific game or lottery. Relevant to the instant proceeding, information as to past winning numbers and the prediction of future winning numbers such as contained in Sneaky Pete would be mailable. Publications such as the aforenoted dream books and Canary Bird as presently printed would be mailable as paraphernalia since these publications do not relate to or promote a particular existing lottery, but merely help an individual to play the game. It is his opinion that the programs here involved would have been mailable, if it be assumed they were offered as predictions of winning numbers or to supply tips for betting on the numbers. Also, the mailing by Reverend Samuel McClure of the letters noted in paragraphs 61 and 63, *supra,* and by Reverend J. Fleming of the letters noted in paragraphs 34 and 64, *supra,* were not in his opinion violations of Section 1302.

Issue 2 re False, Misleading or Deceptive Advertising

74. November 7, 1961 the Commission released Public Notice FCC 61-1316 titled Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising. A copy of this notice together with the first issue of a new Federal Trade Commission publication, "Advertising Alert," were forwarded to all broadcast station licensees. *Inter alia,* this notice stated the Commission has "always held that a licensee's duty to protect the public from false, misleading or deceptive advertising is an important ingredient of his operation in the public interest" with the extent of this responsibility being as set forth in its "Report and Statement of Policy re: Commission En Banc Programming Inquiry dated July 29, 1960." Particular attention was directed "to the fact that licensee responsi-

bility is not limited merely to a review of the advertising copy submitted for broadcast, but that the licensee has the additional obligation to take reasonable steps to satisfy himself as to the reliability and reputation of every prospective advertiser and as to his ability to fulfill promises made to the public over the licensed facilities." This public notice was received and read by Mr. Eaton and discussed with the station's staff. Prior to receipt of this notice Station WOOK had no written policies or procedures for the review of advertising, Mr. Eaton making the final analysis as to suitability and upon its receipt Mr. Eaton again carefully analyzed "the advertisers we had." This basically is one of the things he still does from time to time with the station manager and Mr. Clifton B. Holland, a staff member and vice-president, having the responsibility for review of actual advertising continuity. At the time of receipt of this notice regular sales meetings were being held once a week or more and it was regular procedure to bring anything of this nature to the attention of the entire sales force. The notice was read, discussed and instructions to comply issued at one of these meetings. Review of advertising copy is also facilitated by use of a documenter which records automatically everything that is said on Station WOOK.

75. Reviewing procedure for potential advertising is not as strict if it comes through a reputable agency rather than from the client directly. All advertising is analyzed for continuity to try to determine that it is not misleading in any way, whether it is carried by other media and if so, whether the relationship of the prospective advertiser with such other media has been satisfactory. In some cases the Better Business Bureau is consulted. Station WOOK prior to this notice had been receiving from the Federal Trade Commission copies of its "Advertising Alerts" and had been reading and abiding by these alerts.

76. Under date of February 19, 1964 the Commission addressed a letter to United enclosing a copy of a complaint

issued by the Federal Trade Commission In the Matter of World Wide Television Corporation, Saveway-Meter-Matic Television Corporation *et al.* It was stated in the letter "It has been brought to this Commission's attention that Station WOOK has in the past broadcast advertising on behalf of one or more of these respondents," but "It is not contended that the advertising carried by your station was the particular advertising which is the subject of the FTC's complaint." Station WOOK immediately upon receipt of this letter discontinued all advertising for these firms though there was no indication that the charges related to the ads broadcast and that the FTC proceeding had not progressed beyond the complaint stage.

77. Station WOOK broadcast advertisements for Empeco Corporation doing business as Empire Furniture and Appliance Co. and as Empire Home Equipment Co., for more than a year prior to July 29, 1966 when the ads were discontinued by United. Shortly before this date Mr. Myers had heard from representatives of other area advertising media that Empeco was "having some problems" i.e., "whether or not they were, in truth, doing business on an up-and-up basis." Additionally the account was 120 days in arrears on its bills so the account was taken off the air. The account had been solicited by Mr. Neal Mason, a salesman for WOOK, because of a full page newspaper ad that appeared in one of the local daily newspapers and they were also advertising on at least one other local broadcast station. The owner of Empeco was known to both Mr. Myers, then the sales manager for all of United's Washington facilities, and Mr. Mason as a reputable furniture dealer prior to forming Empeco. On this basis the advertising was accepted without further investigation.

78. On or about September 14, 1965 an attorney of the Federal Trade Commission offices in Washington, D.C. visited Station WOOK and obtained scripts of announcements broadcast on behalf of Empeco. On August 4, 1966

the Federal Trade Commission issued a Complaint directed against The Empeco Corporation and Allen C. Baverman, individually and as an officer of said corporation alleging, *inter alia,* that in the course and conduct of their business respondents had made numerous statements in advertisements inserted in newspapers having a wide circulation in the District of Columbia and the states of Maryland and Virginia and in commercial messages broadcast throughout that area by radio Station WOOK with the following being illustrative, but not all inclusive, of such statements and representations:[12] No money down! Philco 19" portable $2.00 weekly; Empire says pick any name brand 19 inch portable TV and we'll deliver it to you with no money down and payments of only $2.00 a week; Emerson FM multiplex stereo phono $3.00 weekly; free $50 worth of records; call Empire right now for a no obligation free home demonstration and to the first ten callers you get with your TV a $19.95 portable stand free, plus, and listen to this plus, take your choice of a man's or woman's 17 jewel Gruen wrist watch; and here's bonus to the first 10 callers. . . . You get with your TV a $19.95 antenna, plus and listen to this, plus a beautiful Gruen wrist watch. It was charged that respondents would not sell their merchandise without requiring a cash down payment or trade-in, respondents would not arrange credit payments as low as $2.00 weekly, the amounts of $50 for the records, $19.95 for the portable television stand and $19.95 for the television antenna were appreciably in excess of the highest prices at which substantial sales of such merchandise had been made in the regular course of business, and respondents did not give a Gruen watch, or any other article of merchandise, to the first ten callers who responded to their radio commercial message and purchased a television set and therefore these statements and representations were false and misleading and deceptive.

[12] It was stipulated these ads were typical and illustrative of the announcements or messages broadcast by Station WOOK on behalf of this client.

79. In an Initial Decision issued December 23, 1966 by a Federal Trade Commission Hearing Examiner, which was adopted and issued as the decision of the Commission by final order issued February 14, 1967, it was found that respondents had committed each of the acts charged in the complaint[13] and that "The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of respondents' merchandise by reason of said erroneous and mistaken belief."

80. On September 30, 1966 the Commission sent Station WOOK a letter in which it enclosed a copy of the FTC complaint in the Empeco matter and referred to the fact that WOOK carried ads on behalf of this advertiser. The Commission reminded WOOK of its Public Notice of November 1, 1961 regarding false, misleading and deceptive advertising and requested, in light of this policy, comments concerning the FTC complaint which were to include the following:

> Your comments should include a statement as to whether station WOOK is continuing to broadcast advertising by the Empeco Corporation. If such advertising has been discontinued, state the date it was last broadcast on WOOK. In addition, your comments should also outline the steps taken, if any, to satisfy yourself prior to the broadcasting of the advertising as to the reliability and reputation of the advertiser in question.

[13] The complaint contained seven additional counts involving numerous other alleged false, fraudulent and deceptive practices not connected with advertising by United.

81. Mr. Eaton responded to the Commission letter on October 18, 1966 stating that ads for Empeco were no longer carried, that such ads had been discontinued July 29, 1966, prior to issuance of the FTC complaint. He further stated as follows:

> When the advertising was originally contracted for, we were of the belief that Empire was a reputable firm. It had been doing business at the same location for a number of years and advertising for Empeco had been accepted by metropolitan Washington daily newspapers and by other radio stations in the Washington area. During the time such advertising was broadcast on Station WOOK, no complaint was ever received by the station from any of its listeners.

Advertising of the Book Work Wonders From Within Yourself

82. Mr. Richard Eaton has personally broadcast a 15 minute non-denominational religious program over Station WOOK daily since 1947, under the titles "Unity Viewpoint" or "Message of Hope." The only advertising carried on this program beginning in 1964 is for Mr. Eaton's book "Work Wonders from Within Yourself" published by Prentice-Hall. Prentice-Hall listed the book at $4.95 for the years 1964, 1965 and 1966. Its religious section was closed in 1966 and Mr. Eaton purchased all remaining copies in stock. Total copies shipped by Prentice-Hall were in 1964 3,021 copies, in 1965 1,295 copies and in 1966 4,828 copies for a grand total of 9,144 copies. Mr. Eaton ordered approximately 3,000 copies of the original printing and the remaining stock of approximately 4,000 copies in 1966. Prentice-Hall's records on regional distribution for 1964 show for the Washington, D.C. area Brentano's purchased 100 copies for distribution in all their stores throughout the east, Doubleday Store 5 copies and Woodward and Lothrop one copy. Inquiry was made at approximately 40

book stores listed in the Washington, D.C. yellow pages on dates between November 2 and December 2, 1966 and none carried the book for sale at that time. Brentano's stated it had in the past carried the book.

83. On his program of November 7, 1966 Mr. Eaton stated "My book Work Wonders From Within Yourself is available to Unity Viewpoint listeners for $4.00 instead of $4.95." On or about January 30, 1967 the wording was changed on the advice of counsel [14] from "four dollars instead of $4.95" to "four dollars instead of the published price of four ninety-five." All reference to the published price was discontinued following Mr. Eaton's testimony in this proceeding in July of 1970. Sale of the book as a result of it being advertised on this program "is very minimal" and none has been sold to or requested by any store or individual not seeking the book in response to these broadcasts. Had it been requested, the price would have been $4.95.

84. Mr. Eaton does not know how many books have been sold in the Washington, D.C. area for $4.95, nor other than for his own sales, does he know of any that have been sold for less than $4.95. His reason for reciting the publisher's price, commencing as soon as the book was published in 1964 and was on sale in retail outlets, was to indicate that "there was some little advantage" to ordering through his program. He stated on the record that "the number of copies I sell is not very large, and if there is any impropriety

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[14] January 3, 1967 Community filed a petition to deny the application for renewal of license of Station WOOK-TV alleging, *inter alia*, that advertising of this book was deceptive advertising under the 1964 Federal Trade Commission Guides Against Deceptive Pricing adopted December 20, 1963. In its order of designation the Commission stated that "The question of whether or not the advertised $4.00 price for the book constituted a true 'bargain' or was false or misleading according to Federal Trade Commission guidelines may be considered under Issue 2."

in indicating the published price of $4.95, I see no objection to deleting it." It was thereafter deleted, though it is his belief that Prentice-Hall having sold "some 3200" copies, other than his own purchases, this would seem sufficient to establish a retail price of $4.95.

Official Notice of Violation After Inspection of Station WOOK on September 3, 1969

85. United is licensed to operate Station WOOK as a Class IV station, unlimited time, on 1340 kHz with 1 kilowatt power daytime and 250 watts power at night utilizing a non-directional antenna. The transmitter site is located at 650 T St., Northeast, Washington, D.C. near the Baltimore and Ohio Storage Yards close to the railroad tracks. Daytime power of Station WOOK is effectively reduced from 1 kilowatt to about 507 watts by means of a 40 ohm series limiting resistor inserted between the output of the transmitter and the input to the antenna in order to limit the effective field [15] to 150 mv/m. United is also licensed to operate Station WOOK with an auxiliary transmitter employing a power of 250 watts, unlimited time, at a transmitter site located at 5321 First Place, Northeast, Washington, D.C. United is authorized to operate the station by remote control from its main studio located at the auxiliary transmitter site.

86. The officials in the chain of command and radio operators and technicians employed by United from May 1 through September 3, 1969 at Station WOOK included the following: Officials—Richard Eaton, president and sole stockholder; Elmer Carlton Myers, vice-president and general manager; Clifton D. Holland, vice-president and operations manager (also served as an operator); Ernest Fields, program director; Karl Stell, chief engineer; and Angel

[15] Effective field, inverse distance field and antenna efficiency are used interchangeably herein.

Barranco, technical director. Radio Operators—John Bandy (part time); [16] David E. Beasley; Chester L. Brown; Edgar W. Brown, Jr. (part time); Seavy S. Campbell; Daniel W. Clayton (part time); Ralph J. Colbert; Fred Correy; Ernest G. Fields; Michael Frisby; Lavell Harris; Leon Isaac; George Johnson, Jr. (Summer replacement only); Paul Major; Charles Neal; Harry L. Williams (part time); Charles Hall; and Frank Halison. Radio Technicians [17]: Orlando Barranco; Leonel Conception; Juan Conception; and Angel Pedro Perez.

87. Station WOOK was inspected by Commission Engineer Paul J. Harris September 3, 1969.[18] On the basis of this inspection an Official Notice of Violation (FCC Form 793A) was issued alleging nineteen violations, of which eighteen were for non-compliance with the Commission Rules and one for departure from the terms of United's basic instrument of authorization. Some of the 19 alleged violations cited numerous instances of the same violation. United responded to the Official Notice by letter dated September 15, 1969 covering the first and fifth violations and to all of the violations by letter dated January 12, 1970, which was later supplemented by letter dated January 23, 1970.

88. Alleged Violation No. 1 was for violation of Section 73.47(b) in that equipment performance measurements had

[16] Mr. Bandy was employed by United as an operations engineer for Station WFAN-TV, and as an announcer for Station WOOK, and made entries in WOOK's operating logs on May 6, 9, 11, 16, 18, 19, 22, 27, 28, 29, 30 and 31, and June 4, 5, 11, 14, 16, 23 and 28, 1969. He holds a Radio Telephone First-Class license.

[17] Technical operation and maintenance at Station WOOK by the radio technicians were performed under the supervision of a Radio Telephone First-Class licensee.

[18] Engineer Harris was accompanied by FCC Engineer Harold R. Richman, who inspected Station WFAN-FM, licensed to United.

not been made within the past year, the last measurements having been made on February 25, 1968. Under the Rules, the measurements are required to be made at intervals not greater than 14 months which, in this case, would have been by April 25, 1969. At the time of the inspection, therefore, the measurements were slightly more than four months overdue. Taking the measurements was a responsibility of the Chief Engineer and the test equipment used by United for equipment performance measurements at several of its stations was stolen during the winter of 1968-69 while being used for measurements at Station WBNX in New York City. New equipment was ordered from Gates Radio Company and was used for the equipment performance measurements on United's Station WFAN(FM) on March 28, 1969. The test equipment was thereafter also used for equipment performance measurements on United's Rockville and Baltimore, Maryland stations. The measurements for WOOK were commenced in early May of 1969. A problem arose with noise on the telephone line used for carrying programming from the WOOK studios to its transmitter which prevented obtaining necessary audio performance measurements. At times, it reached the point of an audible crackling noise and would cause the station to switch to its auxiliary transmitter, which was located at the same site as the studio and did not utilize telephone lines. This problem occurred particularly during wet weather and would cause changes in the operating parameters indicated at the remote control point. The telephone company made some repairs and changes but none resulted in a permanent correction. Other delays were encountered due to other technical problems which required the attention of the chief engineer who was responsible for making the measurements. At the time of the inspection, the chief engineer had rough copy for the equipment performance measurements. The measurements were completed on September 9 and submitted to the office of the Commission's Engineer in Charge for District No. 24 on September 15, 1969.

89. Alleged Violation No. 2 was for violation of Section 73.113(a)(6) in that the results of the daily observation of tower lights were not entered in the operating logs on one day in May, three days in June, five days in July, one day in August and one day in September, 1969. This violation was established. The licensee in its reply to the Official Notice stated that all of its operators had been reinstructed and were being checked to be sure the error did not recur. On the basis of this response the matter was considered "Cleared" by the Field Offices Division of the Commission's Chief Engineering Bureau, i.e. the licensee's explanation of the violations and assurances of future compliance were accepted and the matter considered by the Field Engineering Bureau to be closed.

90. Alleged Violation No. 3 was for violation of Section 73.92(a), which requires posting of the station authorization, in that the Commission's telegram of August 21, 1968, giving new antenna currents was not posted at the remote control point of Station WOOK. The station licenses were properly posted at the remote control point and the telegram in question had previously been posted there for a period of time. United responded that at the time of inspection the telegram in question was posted at the transmitter. The reply stated that the matter had been corrected by posting it at the remote control point. On the basis of this response the matter was considered "cleared." (See paragraph 89, *supra*.)

91. Alleged Violation No. 4 was for violation of Section 73.116(c) in that the most recent antenna resistance measurement data for Station WOOK was not made available on request to the FCC inspector. The chief engineer, Mr. Stell, could not find the report on the day of the inspection. The report, which was prepared by United's consultants, Gautney and Jones, and filed with the Commission in an application for direct measurement of power on August 6, 1968, had been inadvertently placed in the station's public

file. On the basis of this response, the matter was considered "cleared." (See paragraph 89, *supra*.)

92. Alleged Violation No. 5 was for violation of Section 73.116(a) in that the maintenance logs for Station WOOK for the period April 1, 1969 through July 18, 1969, were not produced on request of the FCC inspector. The inspector asked for the maintenance logs for the period January 1, 1969 through September 3, 1969 and was given a file which should have contained the logs for the period from December 1, 1968 through August 30, 1969. It appeared, however, that those for April 1 through July 24, 1969 were missing. The logs were a responsibility of the chief engineer, who made and maintained them. The licensee was aware at the time of the inspection that it was apparently unable to produce the logs.

93. On September 15, 1969, under letter of that date from Mr. Myers, the licensee submitted to the inspector the logs for the weeks of June 30, July 7 and July 14, 1969, together with affidavits of the chief engineer and another first-class engineer at WOOK to the effect that after diligent search these were the only ones of the missing logs which could be found, that the logs had been maintained for the remaining dates but they had no explanation for their apparent disappearance. With respect to the three logs submitted by letter, the inspector noted that they were identical in form with the others he had received and he accepted them as legitimate logs.

94. For purposes of preparing his official notice the inspector "only used the logs from May 1 up to the time of inspection. . . ." October 3, 1969 he personally returned the logs to Station WOOK and on the same date the official notice of violations was mailed to the station. Copies of the returned logs were made by the station manager and forwarded to the station's counsel who, in the course of subsequent examination of the copies, noted the logs for April 1, 1969 through July 18, 1969 were in the file, but out of

chronological order. The station manager after being informed of this by counsel examined the returned logs and by letter dated January 12, 1970 again responded to the violation stating as follows:

> Item No. 5 was for failure to furnish the maintenance logs for Station WOOK for the period April 1, 1969 through July 18, 1969. As you know, at the time of the inspection the inspecting engineer took with him our maintenance logs for the past several months including this period. Upon their return we found the logs (out of chronological order) for the period in question in that file. Thus, we believe that there has been no violation.

The originals of these logs were placed in evidence herein. The inspecting engineer did not occur in this further response stating that all logs removed from the station had been checked and those for April 1, 1969 through July 18, 1969 were not included with the ones removed by him from the station.

95. Alleged Violation No. 6 was for violation of Section 73.113(a)(3) of the Rules in that at the time of the commencement of inspection at 12:15 p.m. on September 3, 1969, the operating log entries were fifteen minutes behind in that the readings for 12:00 noon had not been made. The licensee submitted an affidavit of the operator in question which stated that he had been reprimanded. The licensee stated all operators were being closely supervised to assure that future log entries were made in a timely manner. On the basis of this response the matter was considered cleared. (See paragraph 89, *supra*.)

96. Alleged Violation No. 7 was for violation of Section 73.57(a) (now Section 73.52(a)) in that the engineer in charge of District No. 24, Washington, D.C. was not notified of the emergency condition requiring operation of Station WOOK at reduced power on June 3 and 4, 1969.

The station operating log indicated the station was operating with reduced power from 5:45 a.m. E.D.T. on June 3, 1969 to 7:00 p.m. E.D.T. June 4, 1969 with the exception of 7:00 to 8:00 p.m. on June 3, 1969. In the period June 3-6, 1969, the station as indicated in its operating and maintenance logs, was having technical difficulties in operating at full power daytime which the chief engineer and his assistants were attempting to correct. Part of the time it was operating on its 250 watt auxiliary transmitter. This is a licensed transmitter and operation daytime with it did not require notification to the engineer in charge. The chief engineer did not notify the engineer in charge of the operation at reduced power on the main transmitter because the periods of time were for only a few hours and he did not believe notification was required. Had the notification specified under the rules for operation at lower power with the main transmitter been sent to the engineer in charge, it would have been filed.

97. Alleged Violation No. 8 was for violation of Section 73.111(c) of the Rules in that corrections in the operating logs of Station WOOK were improperly made on 18 days in the period May 1 through August 31, 1969. Station WOOK operates 24 hours per day and twice each hour five individual entries in the operating log are required, i.e., entries of the time, plate volts, plate current, antenna current and frequency deviation. In the May 1 through September 3, 1969 period involved in the citation, there were 30,240 entries. On the 18 days cited 234 entries were "write overs," i.e., the operator had written over his first entry with a corrected entry [19] and 59 entries had lines drawn through all or a portion of the entries. None of these corrections was initialed. The Rules require that the corrections be made and initialed by the person making the original entry. United was cited for a similar violation as a result of an inspection on January 9, 1962. (See *In re Application of United Broadcasting Co., Inc.* For Renewal of License of Station WOOK 2d 293.)

[19] The correct procedure is to draw a line through the original entry, make the corrected entry and date and initial the correction.

98. Alleged Violation No. 9 is for violation of Section 73.57(a) of the Rules in that "according to the antenna currents shown in the operating log the station was operated with a power which was more than 5% above authorized power" at various times on 82 dates in the period May 1 through September 3, 1969, inclusive. The inspector drafted the citations on the basis of the antenna current entries in the operating logs and if correct Station WOOK did operate with excessive power on those dates. Some of the entries, however, would result in a power which it would be impossible to achieve with the WOOK transmitter. This identical problem arose in *United Broadcasting Co., Inc., supra,* and it was then recognized that entries in the operating logs of Station WOOK for the period then involved did not prove that the station was operated with excessive power, but errors in meter readings were established. This is equally applicable here in substantial degree though obvious operator errors are as hereinafter noted, limited to two dates. United relies on the fact that the meters used for taking these readings meet the minimum accuracy requirements of the Commission's Rules and sets forth the matters of record hereinafter detailed to establish that this citation should not have issued as the antenna currents shown fail to establish that the station was operating overpower.

99. Broadcast transmitters are made to produce the standard powers specified in the Commission's Rules. They normally are designed with a margin of excess power sufficient to handle additional losses which may be met under certain conditions. The margin is on the order of 10 or 12% with a possible maximum of 15% above rated power. Tests on the WOOK transmitter reflect this. Slightly de-

tuned for stability, its normal maximum daytime antenna current is 4 amperes for daytime power (7.2% above rated power) and 2.8 amperes for nighttime power (6.6% above licensed power) corresponding to 1,072 watts and 266.6 watts, respectively. Fully tuned the maximum outputs of the WOOK transmitter are 4.1 amperes daytime and 2.9 amperes nighttime, corresponding to approximately 1.127 watts and 286 watts, respectively. The Commission's Rules permit a tolerance of 5% in power. Including this 5% limitation for daytime and nighttime, permissible readings are, respectively, 3.96 and 2.78 amperes.

100. The minimum scale divison on the WOOK antenna current meter is 0.1 ampere, which corresponds with the required accuracy of the meter under the Commission's Rules of plus or minus 2% of full scale. Reading between the minimum scale divisions is beyond the required accuracy of the meter and it was the practice at Station WOOK to read the meter to the nearest scale division, with relatively rare exceptions when an operator would read the meter to half a scale division, i.e., to midway between divisions. Thus, readings of 3.96 and 2.78, the maximums permissible for daytime and nighttime power, respectively, were taken as 4.0 and 2.8 showing an over power condition if accurate. The meter is subject to a high degree of parallax. Testimony shows meter fluctuations were also a problem with this instrument. Third class announcer-operators were relied on for taking these readings and United permitted this practice for the stated reason "that all that can be expected on an overall basis of third class announcer-operators for accuracy in meter readings is reading to the nearest digit on the meter scale, i.e., the digit representing the required accuracy of the meter." The Commission has no rule on the degree of accuracy with which meters are to be read or attempted to be read. The inspector . . . was of the view that operators could read the WOOK meters to the nearest third or one-half of a scale division.

101. United also urges that these readings, without regard to the rounding off of figures, fail to establish that the station was operating over power as variations in antenna current of a high degree of accuracy are involved and one cannot measure small increments with equipment not designed for that decree of accuracy. The WOOK antenna current meter has the required accuracy of plus or minus 2% of the full scale reading required under the Rules which equals plus or minus 0.1 ampere. In addition the remote meter which was in use for the log entries on which the citation was based, is required by the Rules to be accurate only within 2% of the reading of the antenna current meter at the transmitter which equals plus or minus .08 ampere on the remote meter. United asserts that these permissible margins of error in the antenna current meter and remote meter are additive giving a total tolerance of plus or minus .18 amperes on the remote meter which the operators used. Converting this tolerance to the antenna current readings would give permissible variations night and day, respectively, of .15 and .18 amperes or readings of 2.93 for nighttime and 4.14 for daytime without an over power condition being indicated. Readings in excess of these figures appear only on the following dates, all in the year 1969; June 5—4.5 (3), 4.7 (6) and 4.8 (12); June 28—4.2 (5); July 24—4.8 (20); July 26—4.2 (2); August 3—4.2 (1); August 4—4.2 (8); August 5—4.2 (12); August 9—4.2 (9). The readings of June 5 and of July 24 are obvious operator errors or due to a malfunctioning meter as the powers indicated cannot be achieved by the WOOK transmitter. Thus, except for these dates the readings do not establish that Station WOOK was in fact operating overpower. They do establish that United did nothing to successfully resolve this problem between this and the previous proceeding until recently. Mirrorback meters are available which substantially eliminate parallax errors and meters with accuracies on the order of ½% plus or minus are available. Digital instruments with even greater ac-

curacy are also available. They, however, are not required under the here applicable provisions of the Commission's Rules. The validity of United's position is accepted and the antenna current shown in the operating logs establishes that Station WOOK operated with power which was more than 5% above authorized power only on the aforenoted dates on which the readings exceeded 2.93 and 4.14 night and day, respectively.

102. In August of 1970 Station WOOK ceased using announcer-operators and employed full-time operators with no duties other than technical operation of Stations WOOK and WFAN-FM. The AM remote control equipment and the FM transmitter were moved from the WOOK studio and installed in a new control room. The operators are hired by and report exclusively to the chief engineer. It is stated that "This system will be retained until such time as a reliable means of automation appears." The former chief engineer checked the operators logs daily and was aware of the high readings. He did not inform management of this fact and told the operators that the station was suffering telephone line problems and that they should not be concerned with the apparently high antenna current readings as the readings at the transmitter were within specified values. (See paragraph 88, *supra.*)

103. Alleged Violation No. 10 was for violation of Section 73.57(a) of the Commission's Rules in that "according to the antenna currents shown in the operating log, the station was operated with a power which was more than 10% below authorized power" at various times on 25 dates in the period May 1 through September 3, 1969. The theoretical tolerances for low power at WOOK are 3.66 amperes daytime and 2.57 amperes nighttime. The inspector drafted the citations on the basis of the antenna current entries in the operating logs and if correct Station WOOK did operate with a power below that permitted under the Commission's Rules. In its reply to the Official Notice, the

licensee contended that it should not be charged with low power violations for antenna currents of 3.6 amperes or above daytime and 2.5 amperes or above nighttime because of the aforenoted practice of rounding off readings to the nearest scale division. (See paragraph 100, *supra.*) Readings below these figures appear only on the following seven dates in this period: May 19—2.4(2); May 20—2.3(1); June 2—2.3(8); June 4—2.1(10), 2.0(1), 3.2(19) and 3.3 (7); June 5—2.4(2), 2.3(4); June 7—2.4(5), 3.58(6), 3.5 (2), 3.4(2), 3.3(12); July 23—2.0(1), 1.9(3), 1.8(8), 3.1(3). United contends that for these dates actual under power operation is established only on the date of June 4 for the reason noted in paragraph 101, *supra.* For other dates it asserts that it cannot be determined whether they in fact represented low power or are simply a manifestation of the problems which the station was having with the telephone lines between its studio and transmitter site at the time. This proposed finding is rejected for lack of record support. The practice of rounding off of readings is established. The antenna currents shown in the operating logs establish that Station WOOK operated with power which was more than 10% below authorized power only on the aforenoted seven dates when readings were below 2.4 and 3.5 night and day, respectively.

104. Alleged Violation No. 11 was for violation of Section 73.113(a) (2) in that the operating log does not indicate the cause of an interruption of the carrier wave which occurred in the period 5:58 p.m., June 8, to 10:20 a.m. on June 9, 1969. At the time of inspection, the maintenance logs for these dates were not available. (See paragraph 92, *supra.*) The operating log for June 8 contains an entry that the auxiliary transmitter was put into use at 5:58 p.m. together with the following: "Cause—main transmitter out," followed by the operator's initials. The operating log for June 9, 1969 shows back on main transmitter 10:20 a.m. followed by the operator's initials and the date. The

maintenance log for June 9, 1969 [20] contains an entry showing that the cause of the main transmitter going out was lightning strike which required replacement of tubes and resetting the circuit breakers of the main transmitter. Section 73.113(a)(2) requires "an entry of each interruption of the carrier wave, where restoration is not automatic, its cause and duration, followed by the signature of the person restoring operation (if licensed operator other than the licensed operator on duty.)" The entries made in the operating log do show the interruption of the carrier wave, the cause and the times of interruption and of restoration. The alleged violation is not established.

105. Alleged Violation No. 12 was for violation of Section 73.67(a)(3) for "Failure to cease operation by remote control as required when remote meter readings were not accurate." The operating log of June 9 and June 10, 1969 indicates the remote antenna ammeter was reading high due to wet weather." The entries in the logs for June 9 and 10 concerning high meter readings refer to the transmitter plate ampere readings commencing at 7:30 p.m. June 9 and continuing through 7:00 p.m. June 10, 1969 not the antenna current.[21] Section 73.58(b) of the Rules provides that a station may continue operating notwithstanding loss of one of its meters for a period not in excess of 60 days without further authority of the Commission if no substitute is available. Moreover, subsection (d) of the same Rule provides that where a remote antenna current meter is used and becomes defective the antenna base currents may be

[20] June 8, 1969 was a Sunday.

[21] Both day logs were noted at the bottom by the chief engineer "high readings due to wet weather." No asterisk appears opposite these footnotes. An asterisk is opposite the 7:30 p.m. entry for June 9. An asterisk is also shown on the heading "Final Plate Amps." on the June 10 log. There are, however, no other footnotes on the logs and the chief engineer confirmed by testimony that the footnote related to the asterisk marked readings.

read and logged once daily for each mode of operation pending the return to service of the regular remote meter. By taking such readings WOOK, therefore, could have continued operating even if it had in fact lost its remote antenna current meter as alleged in the citation. The antenna current meter, however, was functioning normally. The violation charged, as worded, is not established.

106. Alleged Violation No. 13 was for violation of Section 73.63(g) of the Rules in that the antenna currents in the operating logs for the auxiliary transmitter indicated that it was operated with a power more than 5% above authorized power on 13 dates in June, July and August of 1969. The antenna current for 5% overpower of the auxiliary transmitter is 1.199 amperes.[22] The normal licensed antenna current for the auxiliary transmitter was 1.17 amperes. The RCA transmitter used by WOOK for its auxiliary transmitter would be expected under normal conditions to have a maximum capability of no more than 12% overpower. The readings in question of 1.4 or more would exceed this capability and, accordingly, are obvious operator errors with the 1.3 readings probably belonging in the same category. The WOOK auxiliary transmitter remote antenna meter was small and had a scale which was extremely difficult to read. The antenna meter was designed by the manufacturer to read up to 1 ampere. The scale, however, was modified by United to read up to 2 amperes. The 1.2 readings represent rounded off figures. Though operator errors are established the overpower operations charged are not. Moreover, if established, the violations

[22] The inspecting engineer allowed a tolerance of 5% above authorized power for the auxiliary transmitter, or 262.5 watts corresponding to his computed antenna current of 1.195 amperes. The 1.199 figure computed by the engineer for United is here used. This disagreement is of no significance as all cited readings, except one erroneously included, were for antenna current readings of 1.2 amperes or more and to 1/10ths only.

would be *de minimus* as some were during daytime hours when WOOK is authorized to operate with one kilowatt power and, both day and night, the auxiliary antenna has a lower radiation efficiency than the main antenna. Thus, the auxiliary transmitter operating with maximum overpower would not exceed permissible radiation for the WOOK main transmitter and antenna.

107. Alleged Violation No. 14 was for violation of Section 73.113(a)(3) in that the operating log did not show the exact time the auxiliary and main transmitters were turned on and off or the exact time the station changed power from night to day or day to night operation. The Commission's Rules do not require the entries in question so there was no violation.

108. Alleged Violation No. 15 was for violation of Section 73.113(a)(3) in that the operating log for August 11, 1969 shows that the main transmitter was in operation from 11:20 p.m. on that date to 12:50 a.m. on the 12th, whereas, entries in the maintenance log indicate that the auxiliary transmitter was in operation during that period. The entry in the maintenance log of August 11, 1969 reads tested auxiliary transmitter and phone lines 11:20 p.m.-12:50 a.m.—low distortion but high noise level. The licensee replied that it had a dummy load to test its auxiliary transmitter so that there was no conflict with the main transmitter being on the air at the same time. Station WOOK used for this purpose a manufactured, non-inductive resistor or coil and had two on hand. The inspector agreed it is possible for the licensee to use a dummy load to test the auxiliary transmitter but did not concur in the reply in the belief that it would be impossible to test the telephone lines to the WOOK main transmitter while the main transmitter was in operation. This belief was based on the assumption that the station did not have at least two auxiliary telephone lines to its main transmitter site "because of the fact that if they did they would use . . . another phone line

instead of going to the auxiliary transmitter when they have trouble with the phone line." In fact, WOOK had a number of telephone lines running between its studio and transmitter site and could have used other lines for programming while the regular programming line was being checked. No violation was established.

109. Alleged Violation No. 16 was for violation of Section 73.57(a) in that the antenna current of Station WOOK observed during the inspection gave an indicated operating power for the station more than 5% above authorized power, specifically, 8% above authorized power. The computed antenna current for this power is 4.02 amperes. The inspection began at 12:15 p.m. at the WOOK studios and the reading in question was made at 12:45 from the remote antenna current meter in the studio. At the time of the inspection, however, the remote antenna current meter was reading 0.1 ampere high. Therefore, the actual antenna current under the facts alleged would have been 3.92 amperes, which is a permissible antenna current for the station under the Commission's Rules. The violation was not established.

110. Alleged Violation No. 17 was for violation of Section 73.114(a)(1)(i) in that the maintenance logs for the period August 18, through August 30, 1969, did not show weekly readings of the base current ammeter and remote antenna current meter. This was an omission on two occasions, one per week, in the two weeks encompassed by the cited period. The licensee replied that this was an error on the part of the station's chief engineer, and that the licensee now had a new chief engineer who was fully aware of the requirement. On the basis of this response the matter was considered cleared. (See paragraph 89, *supra*.)

111. Alleged violations numbers 18 and 19 are based on a "recording of relative field strength of WOOK" made from the roof of the Commission's Washington, D.C. offices with eight of the nine instances cited under violation 19

also involving the violation cited under 18. Violation 18 involves charges of violations of Section 73.111(a) of the Rules in that entries in the WOOK operating logs on 13 dates in the period August 14 through September 1, 1969 do not reflect the actual operation of the transmitter as shown by the recordings. A total of 49 specific entries in the operating logs for these dates are cited, with one of these being cited in error and three being for the date August 13, 1969.[23] Violation 19 involves charges of failure to operate in compliance with the terms of the station authorization in that the recordings show changeover from daytime power to nighttime power on nine dates within the period August 17 through August 31, 1969 was made from 13 minutes up to 1½ hours after the time of 7:00 p.m. EST specified in the station license. Extracts of the recordings from three dates were attached to the citations. One extract (August 27, 1969) did not include the hours during which the alleged violations for that date occurred. In its responses to these citations United questioned the validity of the August 18, 1969 extract of recordings on the ground that the wide fluctuations in power shown are impossible with the transmitting equipment at WOOK. On the basis of subsequent analysis and the evidentiary showing made herein United now takes the position that all these signal intensity recordings, ostensibly of the signal of Station WOOK only, are so wholly unreliable that no reliance whatsoever can be placed on them. The position of the Broadcast Bureau is that these recordings were not made to determine the actual signal intensity of Station WOOK, but only to determine what mode of operation the station was in, i.e., with daytime or nighttime power and whether the main or auxiliary transmitter. It, accordingly, asserts that they are sufficiently reliable to establish the violations charged.

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[23] Recordings were made beginning on August 13 and continuing through September 4, 1969.

112. An anonymous complaint that Station WOOK was not changing power on time at sunrise and sunset resulted in the initiation of the recordings of the signal of the station. The recording equipment was set up in Room 216 of the Commission's headquarters in Washington, D.C. and consisted of an Esterline Angus Graphic Ammeter Model AW, a continuous chart recorder, coupled to a Federal Model 101C field strength meter which in turn was connected to an RG59 shielded line to a doublet antenna located on the roof of the building. This line was fed through a metal conduit pipe that also housed several other lines used for receiving purposes only. Several other fixed antennas, a rotary antenna used by the Field Engineering Bureau, an antenna used for transmitting and a transmitter which operates "around 40 megs." (40 megahertz) are also located on the roof of this building. The field strength meter was last repaired, aligned, calibrated and field tested by the Commission's Laboratory Division at Laurel, Maryland on April 8, 1969. A Heathkit 6-volt Battery Eliminator Model BE-4 operating off the commercial power of the building was used as the power source to feed the field strength meter. A second Esterline Angus Ammeter was used to monitor the Heathkit power supply in order to insure that the voltage output was constant. The equipment was set up and operated throughout by Mr. Alfred Kleist, the Engineer in Charge of the 24th District Office. Mr. Kleist subsequently retired and was not called as a witness. The inspector herein worked with the Engineer in Charge after the week of August 18, 1969 and did appear as a witness. The recorder operated unattended during the nights.

113. The program was to record the relative field strength of WOOK's normal daytime and nighttime modes of operation and not the actual field strength as initially the objective was to determine only whether the operating power of the station was being changed on time at sunrise and sunset as specified in its license. The recordings were made in the same manner throughout with the area of interest being

described as follows: The only thing we were interested in was not the amount of change, we were only interested in time it was changed. We weren't interested in finding whether the changes were proportional or not, made in the proper amount. We were only interested in what time the change was made, and it [field intensity meter used] doesn't have to be calibrated to tell that. The only thing we wanted to show was that the level changed, the relative level changed from one relative level to another relative level, so there is no need to calibrate a recorder or anything else.

114. The pen of the recorder was adjusted so that the daytime signal fell on the upper portion of the chart and the nighttime signal at a lower level. No provision was made to accommodate the signal from WOOK's auxiliary transmitter and when it was used the signal recorded off the scale beyond 100 at the bottom of the chart. In addition to the signal levels for the three modes of operation unexplained fourth and fifth signal levels greater in magnitude than the daytime level and greater in magnitude than the nighttime level were recorded. Unexplained gradually increasing signal levels also appear on the chart. No ordinary operations of Station WOOK could account for these signal levels.

115. Because of the fluctuations and large abrupt changes in the chart tracings on September 2, 3 and 4, 1969, using a Nems Clarke field intensity meter on the roof of the building where the recordings were being made, the measurements being made by the Federal meter as recorded on the chart were verified to establish that the recording equipment was functioning properly. Such measurements were also made from the Soldier's Home area and on Station WOL for the same purpose. No deficiency in the equipment set up was found. In a further effort to determine the causes of these fluctuations the inspector visited Station WOOK's transmitter site again between the time of the

inspection on September 3 and the issuance of Official Notice of Violation on October 3, 1969, for purposes of tests. He had the station placed on both daytime and nighttime power levels, with the power adjusted up and down for each mode of operation. He also "bridged" the resistor used by WOOK during daytime operation so that the transmitter was radiating without the usual resistor in the circuit to determine whether this resistor was shorting out or being intermittently defective. During these tests, the inspector was in communication with the Engineer in Charge at the FCC Building who was making chart recordings on the test operation. The results of these test recordings were not made a matter of record and a memorandum to the Chief Field Offices Division drafted by the inspecting engineer and acting Engineer in Charge notes the problem of the excessive levels on the charts but makes no mention of these test recordings. Additionally, unexplained meter adjustments were made resulting in abrupt changes on the chart, the doublet antenna used is non-selective and the location from which these measurements were made is obviously subject to electrical noise.

116. The operators on duty at the times of the various alleged violations submitted affidavits in the licensee's original response to the citations and testified in the hearing. Operator David E. Beasley submitted the following in his affidavit:

> I was the operator on duty who made the log entries cited at the following dates and times: [Violation 18]
>
> *Date, time, and entry*
>
> 8/27/69—3:30-4:00 a.m.—For auxiliary transmitter (Main night in use)
>
> After having been with this station for a period of only a few days, I encountered a difficulty which I could not understand. This involved an unidentifiable noise.

I recall not being able to contact anyone by phone until shortly after 4:00 a.m. I put the auxiliary transmitter on the air at 3:30 a.m. but that the main transmitter nighttime stayed on the air without modulation until after 4:00 a.m. However, I was taking the meter readings for the auxiliary transmitter at 3:30 and 4:00 a.m. I am at fault for this violation due to newness at this station because I failed to note if one or both transmitters were operating.

8/26/69—3:00 a.m.—For auxiliary transmitter (Main night in use)

Engineers working on transmitter at the time of this violation apparently started operation on main transmitter. The operation of the main transmitter under this circumstance would not be apparent to the operator. It would require switching the main transmitter remote control panel to the positions for meter readings, which the operator would not normally do once he was operating with the auxiliary transmitter.

117. He testified that after reconsideration, the statement in his affidavit was not entirely accurate. He was on duty from 2:00 a.m. to 6:00 a.m. on August 27, 1969 and acknowledged that entries in WOOK's operating log made by him on August 27 at 3:30 a.m. and 4:00 a.m. indicate that the auxiliary facility was in operation. He believes, however that this was the day his transmitter readings "were dead and I was off the air" as he couldn't hear anything. Prior to going dead, the carrier level had been dropping, he started getting more interference and kept boosting the RF input to the modulation monitor. He did not know how to place the auxiliary transmitter in operation or what to do until he was able to contact Mr. Holland. Upon receiving instructions he placed the auxiliary transmitter into operation at approximately 4:12 a.m. He did nothing to take the main transmitter off the air believing that, it being dead, there was no need "to turn it off." He had technical difficulty with the station when he went

on duty at 2:00 a.m. The antenna current began to fall from 2.7 amperes at 2:30 a.m. to 2.6 amperes at 3:00 a.m. and to 1.9 amperes at 3:30 a.m. The transmitter ceased to function between 3:30 a.m. and 4:00 a.m. The auxiliary facility was placed in operation at 4:19 a.m. according to the following notation written in WOOK's operating log "Xmtr change to Aux 419 am." Mr. Beasley did not examine the operating log entries at the time of preparing his affidavit.

118. Mr. Beasley testified that the auxiliary transmitter was in use when he went on duty at 2:00 a.m. on August 26 and the operating log for that date indicates that at 3:00 a.m. it was still in use and that at 3:30 a.m. the daytime facility was in operation. The meter readings from 3:30 a.m. to 5:30 a.m.[24] were taken by phone because there was someone at the transmitter working on it and the station was not operated by remote control.

119. Operator Seavy Campbell submitted the following in his affidavit:

> I was the operator on duty who made the log entries cited at the following date and time: [Violation 18]
>
> *Date, time, and entry*
>
> 8/30/69—6:00 a.m.—For daytime operation (Station on night operation)
>
> On this date I was making the 6:00 a.m. reading. Because it was the reading scheduled for 6:00 a.m., I so recorded it. I now realize that in the future exact time of the reading must be entered.

Mr. Campbell testified that he went on duty at 6:00 a.m., but the affidavit was in error in that the entry in the operat-

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[24] Log entries for each half hour from 4:00 a.m. to 5:30 a.m. show nighttime plate voltage and daytime plate current and antenna current.

ing log for 6:00 a.m. was made by Daniel Clayton, the operator going off duty at that time. He did not review the operating log at the time of preparing the affidavit. He did examine this log shortly prior to testifying and at that time became aware of the fact that the entry was not in his handwriting.

120. Operator Ralph Colbert submitted the following in his affidavit:

> I was the operator on duty who made the log entries cited at the following dates and times: [Violation 18]
>
> *Date and Time:*
>
> 8/31/69—8:00 p.m.
>
> 8/31/69—8:30 p.m.
>
> 8/17/69—8:00-9:00 p.m.
>
> August 31, 1969—8:00 p.m.

I took the 8:00 p.m. readings 13 minutes late at which time I was reading nighttime power. Since these were the readings for 8:00 p.m. I identified them as such in the log. I know now this should have been logged at 8:13 p.m. E.S.T. instead of 8:00 p.m.

> August 31, 1969—8:30 p.m.

When the transmitter went off the air about 8:17 p.m. I tried in vain to put the carrier back on the air. I then sought the help of an engineer. We finally got the main transmitter on the air just before 9:00 p.m. I returned to my log to bring it up to date and noticed the empty 8:30 space at which time I wrote in a nighttime reading. After I had written it, I realized that at 8:30 the station was off the air or on the auxiliary transmitter and so I crossed out the entry, put the date and my initial.

121. I was the operator on duty on the following occasions listed in the Official Notice.

[Violation 19]

> August 17, 1969, power reduced at 9:13 p.m. E.D.T.
>
> August 31, 1969, power reduced at 8:13 p.m. E.D.T.

Due to the tight duty on August 17 and series of tape recordings that I made of personnel that appear on the program that evening I failed to turn the power down at the correct time, and I did it one hour and 13 minutes late. I regret making this error and will see that it will not happen again.

> August 31, 1969—8:13 p.m.

WOOK had an automatic device that was supposed to change the transmitter power at the proper time. The device did not work properly on this date at 8:00 p.m. It was my intention to wait the full five minutes that is allowed to see if it would trip the power. I got busy and forgot to notice it until 8:13 which is 8 minutes beyond the limit. At 8:13 I made the power reduction to 250 watts.

It has been impressed upon me the seriousness of making a log entry that is not accurate, and I am now more careful in this matter.

122. Mr. Colbert's testimony corroborates his statements in the affidavit that he read the remote control meters at 8:13 p.m. on August 31 and entered the reading in WOOK's operating log for 8:00 p.m. He did not realize that it was necessary to log the actual time the meters were read but was later notified to this effect. On August 31 he had technical difficulty with the station at the beginning of a program at 8:30 p.m. and the station went off the air. He ob-

tained the assistance of an engineer who attempted to put the auxiliary transmitter into operation, but could not. About 8:55 p.m. the station resumed operation with the normal facility. He made a log entry at 8:30 p.m. but realized that the station was not in operation and scratched it out and initialed it. He made the following entry opposite the time at 8:30 p.m.: "OFF The Air 8:30 PM-855". An entry under it read: "CAUSE UNKNOWN—AUX XMTR ON K.S." K.S. are the initials of the chief engineer employed at that time.

123. Mr. Colbert testified that he was on duty on August 17 and because he was taping a program he changed operating power late at 9:13 p.m. Commencing at 8:00 p.m. on August 17, he made the entries in WOOK's operating log without having read the meters.

124. Operator Ernest G. Fields submitted the follov ing in his affidavit:

> I was the operator on duty who made the log entries cited at the following dates and times: [Violation 18]
>
> *Date, Time, and Entry*
>
> 8/28/69—6:30 a.m.—For aux. trans. (Main nighttime in use)
>
> 8/26/69—6:00 a.m.—For nighttime operation (main trans. daytime in use)
>
> 8/25/69—6:30 a.m.—For nighttime operation (main trans. daytime in use)
>
> 8/22/69—6:30 to 7:30 a.m.—For aux. trans. (main trans. daytime in use)
>
> On August 28th at 6:30 a.m. I logged the readings for the auxiliary transmitter which was on the air at the time. There were changes back and forth at this time from the main transmitter to the auxiliary transmitter because of telephone line noise in the lines to the main

> transmitter. I inadvertently left the main transmitter on after switching to the auxiliary transmitter. I did not realize this because there are no meter readings for the main transmitter unless the switch for remote readings is activated. I was unaware that both transmitters were on the air at that time; however, I caught the error and switched the main transmitter off at the time of the 7:00 a.m. meter readings.
>
> On August 26th at 6:00 a.m., having just come on duty and knowing that the transmiitter should have been in low power, I erroneously read the meters for nighttime operation.
>
> August 25, 1969 6:30 A.M.
>
> On this date the clock which changes the station power made the change at the proper time. This clock had not been working too well in the days preceding and I had changed the power by hand. At 6:30 I remembered that I had not made the change manually and decided we must still be on low power. So I entered a low power reading before I checked the meter. Upon checking the meters I found the station on high power and so the 6:30 readings were incorrect. I noted the proper power change time on the bottom of the log but neglected to cross out, date and initial, and explain the incorrect entry. I know I should have checked the meters before making the entry and I will not commit this infraction again.
>
> On August 22, having put the auxiliary transmitter on the air at 6:13 a.m. because of the static noise, I began reading the auxiliary transmitter, not knowing the main transmitter was on at the time. I thought I had turned it off.

125. Mr. Fields testified that during this period the station was changing from main to auxiliary operation because

of a screeching noise coming out over the air. This particular situation had been going on for several days, possibly a week. At the time of preparation of his affidavit he did not in fact recall putting the auxiliary transmitter into operation without taking off the main transmitter, he in fact thought he had done everything correctly. In the belief, however, that the Official Notice was correct he assumed he must have failed to turn the main transmitter off at the times of change to the auxiliary transmitter. The affidavit was executed as "an explanation, to the best of my knowledge of the charges that the FCC made."

126. Operator Charles Neal submitted the following in his affidavit:

> I was the operator on duty who made the log entries cited at the following dates and times: [Violation 18]
>
> *Date, Time, and Entry*
>
> 8/21/69—12:00 midnight—For main night transmitter (Auxiliary transmitter in operation)
>
> 8/25/69—8:00 p.m.—For nighttime operation (Station in daytime operation)
>
> I have no recollection of turning on the auxiliary transmitter on August 21, 1969. During this period, I understand there was some difficulty with our regular transmitter. Perhaps this gave the impression that the auxiliary transmitter was in operation.
>
> August 25 at 8:00 p.m. was the first time I had worked during a power change, and I was late in doing this. The readings were the 8:00 p.m. readings and I logged them as such. I understand that this was wrong and will log the exact time that readings are made in the future.

127. I was the operator on duty on the following occasion listed in the Official Notice:

> [Violation 19]
>
> August 25, 1969, power reduced at 8:17 p.m. E.D.T. (17 min. late). I worked overtime for the man who normally changed power. Previously to this time I had never had the opportunity to run into a power change. I understand that I was in error and I will not make such an error again.

128. Mr. Neal acknowledged that he made the operating log entries on August 21 at midnight and that, according to the entry, WOOK's main transmitter was in operation and he still believed the log entry to be correct. He could not indicate the nature of the difficulty with the main transmitter referred to in his affidavit, but was led to believe there was difficulty by the notations written in WOOK's operating log that "The auxiliary transmitter went on at 6:35 a.m., the main transmitter went back on at 9:53," and there is an explanation at the bottom, "Main transmitter off, auxiliary on, due to phone line noise, as directed by C&P and Karl Stell." Mr. Neal had no independent recollection that he was on August 25, 1969 late in changing to nighttime power. He stated in his affidavit that he was late in making the power change on the basis of the Commission's finding in the citation and review of the extract of the chart for that date included with the citation. He assumed these to be accurate and, therefore, that he had in fact changed power 17 minutes late.

129. United was cited for similar violations as a result of inspections on August 9, 1961, January 9, 1962 and July 8, 1964 (Item No. 10(b)) and by Official Notice dated January 14, 1965.

130. United was previously charged twice with failure to change operating power on time by Official Notice of Viola-

tion as a result of inspections on January 9, 1962 (Item 1) and July 8, 1964, (Item 14) and by Official Notice dated January 14, 1965.

Ground System of Station WOOK

131. Extensive evidence was adduced as to whether the technical operating difficulties of Station WOOK were due to an inadequate ground system. Operating difficulties occurred particularly when it rained or snowed. The ground system in United's license is described as consisting of 180 equally spaced, buried, copper radials each 150 feet in length except where limited on the north by property lines.

132. Mr. Albert M. Gallemore, Jr. was employed by United as chief engineer from September of 1966 to the first week in January of 1967. He assisted Robert W. Schulz, a consulting engineer with the firm of Gautney and Jones, in surveying the ground system at the antenna location on T Street. He testified that they dug a ditch at least a foot deep in most areas and fairly close to the tower and transmitter building over an arc of a little more than 180 degrees, but found no ground wires. Two ground rods with 2-inch copper strap running from them to the transmitter were found. The remaining area around the transmitter building was covered over with concrete. Mr. Gallemore had noted that when it rained or snowed, the antenna impedance became unstable, the antenna current would decrease and at times the transmitter would automatically cut off the air. He called this to the attention of Messrs. Eaton and Myers and recommended that at least half of a new ground system be installed, since the area for the other half around WOOK's tower was covered with concrete and not all of the property was under Mr. Eaton's ownership.

133. Mr. Schulz testified that in the latter part of 1966 the station had some trouble with stability during heavy rains and that he went to the transmitter site with Mr. Gallemore and dug a few holes around the site to determine if

there was a ground system. His understanding at the time was that the ground system of WOOK was supposed to have been 180 bonded radials of approximately a quarter wave length and a ground screen under the antenna. They dug a hole at the base of one of the concrete supporting structures for the antenna where a ground strap was connected to a leg of the tower and found a ground screen of unknown dimensions attached to the ground strap. In an open area of the site 30 feet from the tower and midway between the antenna and a sharp dropoff toward the B & O railroad yards, they dug a haphazard type of trench six or eight inches deep over an area of about ten feet or 30 degrees arc to see if they could find any ground radials, but found none. The ground at the time was semi-frozen, difficult to dig into and rocks and cement covered a good portion of it, thus preventing them from digging any farther.

134. Following this survey he reported to Mr. Myers by letter dated December 23, 1966 as follows:

> At your request, I have made an engineering survey of the WOOK equipment in order to determine reasons for a weak signal in many areas of Washington and to ascertain if there were any corrective measures that could be taken. As mentioned during our telephone conversation yesterday, the recommendations I am going to make are set forth with complete realization that WOOK and every other radio facility in the U. S. is in business to make money and consequently, dislikes pouring funds into technical improvements unless they are absolutely necessary.
>
> The WOOK antenna has no ground system other than the ground screen directly under the tower. Some engineers are of the opinion that a unipole system such as WOOK's relieves the necessity for good grounding. We have not found this to be so. Twice in the past two weeks, moisture accumulation around the WOOK tower has caused the antenna current to undergo substantial

change. This change of current gives strong indication that the tower grounding system is inadequate. Since your operation is run on remote autolog basis, a number of complications arise. The remote control system you are using is activated by antenna current variations. So when the current goes up as a result of moisture accumulation, the remote governing devices automatically reduce transmitter power output. This reduces your coverage and in many cases, takes you off the air. We should make an attempt to improve the ground system as much as possible.

135. Mr. Schulz, "one or two months later" made about 20 field strength measurements at substantially the same points measured in the early part of 1961 in order to prove that the efficiency of the antenna was essentially unchanged and found his measurements to be very close to the 1961 measurements. The antenna impedance was measured over a period of time and he did not observe any substantial variation. Mr. Schulz recommended an expansion of the ground screen since he believes this generally has a greater effect on stability of the system than the radials. Thereafter, the installation of a larger ground screen about 60 by 60 feet or perhaps 60 by 80 feet plus 20 or 30 radials of unspecified length was completed by July 31, 1967. The change in WOOK's ground system was not reported to the Commission. About July of 1968 Mr. Schulz replaced WOOK's antenna coupling network and remeasured the antenna resistance.[25] A report relative thereto was dispatched to the Commission by letter dated August 6, 1968.

136. Mr. Frank Arthur Del Vecchio was employed by United as chief engineer from January to June of 1970. Within the first two months of his employment he inspected the WOOK ground system due to the variances found in

[25] The measurement showed a change from 41 ohms in 1961 to 34 ohms in 1968.

readings of the antenna current, plate voltage and plate current. In remnants of what appeared to be the ground system he found broken wires that did not have electrical continuity with the tower. The faulty ground system caused the meter readings to vary as the antenna tower was shunt-fed and its impedance changed. At one point he measured the antenna impedance and found it varied as much as 2.5 ohms in a period of two and one-half hours. He also noted that rain and snow contributed to the change in antenna impedence and instability. He re-examined the ground system by digging holes to locate the radials and, in testing the wires for continuity, found practically no ground system on one side of the tower and only one half of the system on the other. He notified Messrs. Myers, Barranco, Holland and counsel for United about its condition pointing out that a number of the aforenoted violations for which the stations nad been cited were probably due to the ground system causing instability in the operation of the station. Two estimates were obtained to improve the system, one for approximately $1,700 from Techtronics and another for $1,495 from Stainless Tower Co. A third estimate dated February 23, 1970 of $1,438 directed to Mr. Del Vecchio's attention was obtained from Utility Tower Company, Mayfield, Kentucky specifying the installation of 60 radials 100 feet long and an additional 60 radials 50 feet long. No change in the ground system was made as a result of Mr. Del Vecchio's survey.

137. Mr. George E. Gautney, a consulting engineer, investigated WOOK's ground system in the latter part of 1970. Field intensity measurements were taken in December 1970 and January 1971 in order to establish whether the antenna system was operating in the same manner as in May 1961 when the last field intensity measurements to establish effective field were taken. On the basis of the new measurements, it was found that the antenna radiation and the efficiency of the ground system were essentially the same as in May 1961 and it was concluded that the ground

system, apart from the ground screen, must be essentially the same and in at least as good condition as it was in 1961. In 1961, measurements were taken on eight radials bearing 0, 45, 90, 135, 180, 225, 270 and 315 degrees true. Those taken in 1970-1971 were on four of these radials in the directions of 45, 135, 225 and 315 degrees true and as near as possible to the locations of the 1961 measurements. These four were selected because it was believed the measurement points were more accessible and would provide the best measurements when taking into consideration the extent of building construction in the general area. Measurements were not taken on the other four radials because Mr. Gautney believed sufficient information was obtained from the four that were measured to determine that there had been no change in the radiation efficiency of WOOK's antenna.[26]

Control of Technical Operation

138. In February 1965, a month after WOOK's last license renewal was designated for hearing. Mr. Eaton retained the services of Mr. Hyman Cohen to be his technical advisor with respect to the technical operation of WOOK as well as other United stations. Mr. Cohen was formerly a Commission engineer and previous to his retirement was the Engineer in charge of the Commission's Baltimore, Maryland office. He was placed in full charge of insuring compliance with the rules and regulations of the FCC and of good engineering practices in the operation of Mr. Eaton's stations and particularly of United's Washington stations. Mr. Cohen made inspections of Station WOOK, wrote memos outlining the problems he found and made recommendations for corrective action. During his tenure Mr.

[26] Section 73.186 of the Commission's Rules specifies that measurements be made on eight or more radials to determine the effective field.

Cohen sent about 15 memoranda to Mr. Eaton concerning various facets of WOOK's operation. A memorandum of January 31, 1967 indicated that Station WOOK was operated underpower with 650 watts instead of 1,000 watts and that corrective action was being taken by Mr. Cohen. A memorandum of April 25, 1967 reported that the logs indicated erratic operation of the station on April 5 and 6, 1967 which forced use of the auxiliary transmitter. By memorandum dated May 16, 1967 Mr. Cohen reported he searched for, but could not find the maintenance logs of Station WOOK. In addition he reported eight operating logs which needed correction and had omissions dating back to March 22, 1967 which were still uncorrected and that he repeated tests on the "raise power" switch and noted no change in power. By memorandum dated May 31, 1967 he noted that power changes were 15 minutes late on May 11, 12, 13, 14 and 18, 1967 and 15 minutes long on May 4 and 5. Mr. Eaton investigated this matter and found that the power was increased late at sunrise on the dates indicated, and 5 to 10 minutes early on May 4 and 5 because of difficulty with the automatic clock which controlled the automatic power changing device. To correct this difficulty Mr. Eaton ordered a different automatic alarm and power changing device, but this also failed to operate satisfactorily. He then asked Messrs. Myers and Holland to personally take charge of insuring that the station's power was changed on time at sunrise and sunset.

139. Mr. Cohen died in the latter part of 1967. After his death, Mr. Eaton placed the engineering under the personal supervision of Mr. Myers. Mr. Myers thereafter regularly questioned the chief engineer about the technical operation of the station and was always given a satisfactory answer. No logging errors were brought to Mr. Myer's attention prior to the issuance of the Official Notice of Violation and he did not personally inspect the operating logs of WOOK at any time from January 1968 to the time of issuance of the citations on September 3, 1969. He did,

however, on daily visits to the WOOK control room determine that the operators were keeping up with their logging duties.

140. During the course of its last license renewal hearing (4 FCC 2d 293) representations were made by United as to steps taken to insure proper future technical operation of the station. These were relied on in granting renewal. It was represented that the WOOK operators would be tested at regular intervals to cover the specific functions required at WOOK; that the station had resumed the practice of issuing written notices of violations to be signed by the operator whenever a questionable matter in the operating logs was uncovered; and that all operators were furnished a copy of an "operating procedure for WOOK," which they were required to sign. It was found that automatic logging equipment had been installed and was operative, that an independent automatic alarm system had been installed which would automatically take the station off the air if power was not automatically maintained at approximately the licensed value and that the off-on switches at the remote control point for the main and auxiliary transmitters had been combined so that only one could be on the air at any time.

141. Following Mr. Cohen's death the station manager directed the chief engineer to give the operators' test, but did not know if it was done or whether violation notices had been issued. The proposed automatic equipment was in fact installed, but had become inoperative before the period involved in the most recent violation notice. Replacement equipment had also proved unsatisfactory.

142. It was the station manager's position that failure of the chief engineer to fulfill his duties was the primary cause of the foregoing technical violations and as a consequence a new chief engineer was hired in January of 1970. Disagreements arose and he thereafter resigned. The present chief engineer was hired in June of 1970.

143. In the spring of 1970 it was also concluded that it would be impossible to utilize automatic logging and in August of 1970 Mr. Eaton decided to cease using announcer-operators and employ a system of fulltime operators with no duties other than technical operation of the station. The AM remote control equipment and the FM transmitter were moved from the WOOK studio. A new remote control system for the WOOK main transmitter and the AM auxiliary transmitter and FM transmitter were placed in a new control room on the ground floor of the building. At the same time, a full time staff of licensed operators was hired at a cost of approximately $25,000 per year. Their only duties are the technical operations of the AM and FM stations. The operators are hired by, and report exclusively to, the chief engineer. It is proposed that this system will be retained until such time as a reliable means of automation is found.

144. In the new control room there are posted instructions to the operators. There is an alarm bell that rings at power change times and Messrs. Myers and Holland personally check at power change times. All of the meters for the WOOK main transmitter operate continuously without a stepping relay arrangement for selective reading. There is an interlock between the main and auxiliary transmitters preventing operation of either one when the other is in operation. Work is continuing on the telephone lines from the WOOK studios to its main transmitter.

145. In November of 1970 Mr. Hart Cowperthwaite was employed as general inspector and adviser for all the stations associated with United and Mr. Eaton under a one year letter of agreement. The contract provides that after the one year it is to continue indefinitely, but may be terminated by either party. Essentially his functions are to be the same as those formerly performed by Mr. Hyman Cohen (paragraph 138, *supra*). Like Mr. Cohen, he was formerly a Federal Communications Commission engineer

and at the time of his retirement was Chief of the Rules and Standards Division. He is to report directly to Mr. Eaton.

Programming of Station WOOK

146. Both in mitigation and as a comparative factor, extensive evidence was adduced by United of the past programming of Stations WOOK and WFAN-TV. In addition to the religious programs noted in paragraph 9, *supra,* the following programs were, *inter alia,* broadcast by Station WOOK during the period October 1, 1963 to October 1, 1966: Faith of Millions a 15-minute program broadcast 100 times on Sundays at 8:00-8:15 p.m. It was produced by the Roman Catholic Interracial Council of Washington, D.C. This program, under the auspices of the Roman Catholic Archdiocese of Washington, was a roundtable discussion program with a moderator and guests. Topics covered a wide spectrum including civil rights, politics. the arts and education. Among the moderators of Faith of Millions were Dr. John O'Connor of Catholic University; Dr. Paul Cooke of D.C. Teachers College; and Msgr. Geno Baroni of the Archdiocese of Washington. It was designed as a special venture to promote harmony and understanding between members of all races. *Community Contact,* a three minute program broadcast approximately 12 to 15 times daily during the period November 30, 1964 to March 4, 1965. It consisted of three-minute taped interviews and was the predecessor of a program developed later called "Checkpoint Community Action." This early series, entitled "Community Contact" was designed to present topics of current interest to the Black community, including Negro history, preventive medicine and social welfare services available in the District of Columbia. *Checkpoint Community Action,* a series of taped public service broadcasts, one to three minutes in length which succeeded the "Community Contact" series, *supra.* The series was designed to bring to the public's attention many of the services offered by the District of Columbia city government and to examine some of the

crucial problems facing the District of Columbia inner city community. Representatives of various city government and civic organizations outlined city problems in need of attention and discussed which services were available through public or private facilities to assist in combatting the problems. These recordings were broadcast several times throughout the day. Commentary, a three to five-minute news analysis feature, on tape which was carried on 90 dates over the period of October 1, 1963 through October 9, 1964. The focus of the Commentary series was on local events, community events and often, news items of special interest to members of the Black community in Washington. The series was devoted largely to District of Columbia issues. *The Social Security Show,* a series of five- to ten-minute shows produced by the Social Security Administration. It specialized in publicizing the Social Security law and was broadcast 95 times during this period on Saturdays at 12:00 noon. *American Veterans Committee, Citizens First,* a fifteen-minute program produced by the Committee and presented live at 6:15-6:30 p.m. on 111 dates within the period October 5, 1963 and September 24, 1966. This series from time to time involved discussions of local problems of concern to the District of Columbia. *The American Consensus,* a five-minute mutual network program broadcast 94 times Monday through Friday over a period of approximately five months. It presented the results of national polling on major news topics of the day. *YMCA Series,* a series of 29 fifteen-minute shows carried, both live and on tape, over the period of October 12, 1963 through February 21, 1965. This series discussed major community questions affecting the entire District of Columbia.

Most of the production, including the selection of subject matter, was done by WOOK personnel. A YMCA employee was involved in contacting persons to appear on the series. *Doctor In The Kitchen,* a series of 36 five minute programs on tape broadcast between the dates December 5, 1965 and September 25, 1966. The series was produced by the Ameri-

can Dairy Council. The host was a practicing physician and was assisted on the program, from time to time, by a professional dietician, also a member of the American Dairy Council. The host described the relationship between proper diets and good health. *Alma John Talks to Teens,* a series of 18 five minute programs [27] on tape broadcast during the period November 7, 1964 and November 20, 1965. The series was an advice-to-teenagers show, geared particularly to teenage high schools girls. Topics varied from good grooming and personal hygiene to techniques on developing poise. *Mutual News,* a five minute network news program, broadcast 17 times daily on the half hour. Mutual News began on Station WOOK in May of 1966. *Wonder High School Quiz Series* [28] a 30 minute program simulcast with WFAN-TV 28 times on Saturday at 6:30 p.m. during the period March 7, 1964 through May 29, 1965. This program was presented in cooperation with the District of Columbia Public School System and involved students from the Junior and Senior High Schools. The quizzes were designed as an elimination type contest with two schools competing against each other. Because of the disparity in academic achievement levels between the Junior and Senior High Schools the problem was designed along lines of recall rather than as a measure of academic achievement. *Tune in Your Schools* a/k/a *Know Your School,* a 15 minute program broadcast 26 times on Saturday at 6:00 p.m. during the period January 9, 1965 and July 17, 1965. This program was presented in cooperation with the District of Columbia Public School System and involved students from elementary and high school levels. It included dramatic skits, musical presentations and

[27] The initial program was 10 minutes in length and thereafter 5 minutes in length.

[28] United exhibits 16 and 17 give the title as "Wonderbread High School Quiz." United exhibit 39 gives it as shown here. The program was sponsored by Wonderbread.

instructional sessions. *Washington Speaks,* a 30 minute program simulcast with WFAN-TV 48 times on Monday from 11:00-11:30 p.m. during the period February 17, 1964 to July 19, 1966. The program was a roundtable discussion which presented representatives and officials from varied walks of life discussing topics of current importance. It was moderated by the WOOK News Director initially and later by Professor Richard Smolka of American University.

Hot Seat, a 30-minute program broadcast 36 times at 9:30-10:00 a.m. on Tuesday during the period January 12, 1965 to August 24, 1966. It was periodically simulcast with Station WFAN-TV. The program initially presented department heads and other high ranking city government officials to discuss their roles and the performance of their respective departments. The program was later enlarged to include individuals not specifically tied to city government. *The F.B.I. Show,* a five-minute program broadcast 15 times on Saturday at 6:30 p.m. and 27 times on Tuesday at approximately 9:54 a.m. during the period of October 5, 1963 and July 6, 1965. This program was taped by the F.B.I. at its headquarters and was conducted by an official of the F.B.I. Content included F.B.I. operations in general with time being devoted to particular areas such as investigations, administrative problems involving public cooperation with the agency and instructing the public in methods of preventing or curtailing crime. The F.B.I. program series originated as a result of a guest appearance on WOOK by Mr. Richard De Loach, who was then a deputy or assistant director of the F.B.I. At the conclusion of that appearance, Mr. De Loach and Mr. Holland discussed the possibility of a regular series. The F.B.I. show resulted and was carried exclusively by WOOK in the Washington, D.C. area. *Message of Hope* (see paragraphs 9 and 82, *supra*), a 15-minute daily program of inspirational messages, excerpted from Mr. Eaton's book, *Work Wonders From Within Yourself.* It is an attempt at providing disenchanted people with a modern day message to

assist them spiritually and emotionally. *Richard Eaton and the News,* a series of fifteen-minute newscasts, broadcast live, Monday through Friday, from 6:00 to 6:15 p.m. The series presented the president of the United Broadcasting Company giving a detailed look at the background of the news. In 1966 Mr. Eaton reduced the number of his personal newscasts, alternating in the evening news time slot with Mr. Ronald Pinkney. On those days, the program was titled *News With Ron Pinkney. AM News Headlines,* a series of 3- to 5-minute newscasts broadcast usually at 12:30 a.m., 1:30 a.m. and 4:30 a.m. The news items were selected from the wires of the Associated Press. "AM News Headlines" commenced on May 5, 1966. *The Evening District Report,* a series of one-half hour community calendar type programs broadcast live Monday through Friday for slightly over one year, in 1965-66. This program detailed community events, religious news and club news.

147. One time special programs broadcast during the period October 1, 1963 to October 1, 1966 included the following: *Year's End News Summary Special,* broadcast on January 2, 1966 was an effort by Station WOOK to recap the top stories of the year and relate their importance to Black people and to history. At the invitation of Mr. Ronald Pinkney, *supra,* representatives appeared from the Washington Evening Star, the Washington Post, the Washington Daily News, the Afro-American, the Chicago Defender and Johnson Publications, publisher of Ebony and Jet magazines. The programs presented these several viewpoints as to the biggest story covered during the prior year and an attempt to arrive at a consensus as to what the different papers and different reporters considered to be the biggest story of the past year, in terms of its impact on civil rights and its importance to Black people in general. *Special on the Emergency Committee on the Transportation Crisis,* a discussion program presented during the early days of the controversy arising out of the proposed North Central Freeway Routes in Washington.

It involved a discussion of the potential effects the preliminary designated routes would have in terms of disruption and dislocation problems in the Black inner city ghetto. *Job Opportunity Program Special,* a one-hour program for the Black community of the District of Columbia, featuring members of the business community in a panel discussion on job opportunities for young people. After the discussion, a question and answer period was held with the audience of teenagers. *Special on the 1963 March on Washington,* a program on which recognized national civil rights leaders in charge of the March on Washington were interviewed. They discussed the planning and logistics involved in a successful massive demonstration. *Free D. C. Discussion Special,* broadcast February 20, 1966, featured a roundtable discussion on the problems of Home Rule in general, and several aspects of local politics of particular interest to the Black community. *The Medicare Public Service Special* broadcast March 27, 1966 was a 15-minute program featuring enrollment instructions to persons eligible and wishing to become eligible for the Medicare program. *The Urban League Membership Drive Special,* a 15-minute special simulcast on Stations WOOK and WFAN-TV. It featured the D.C. Director of the Urban League, other members of that organization and various Negro professionals and entertainers from Washington, D.C. *NAACP Telethon* simulcast March 12, 1965 over Stations WOOK and WOOK-TV presented the entire cast of the off-Broadway production "Jericho and Jim Crow" as a special telethon in honor of the NAACP. It was designed to assist that organization financially and in obtaining new members. *Christmas Special* broadcast each year, was presented by the Gospel Tabernacle and presented an opening prayer, sermon, chorale music and a closing benediction.

148. The music format of Station WOOK during the period 1963 to 1966 included rock, rhythm, blues and gospel music. Gospel music included both recorded and live presentations by local talent groups. Groups appearing on the

station included "The Southern Gates", "Mansfield Choir", "D.C. Aires", "Gospel Jubilees", "The Christianaires", "Kings of Melody" and "Spiritual Wonders." Other gospel music programs using local talent "Inspirational Time" one hour Monday through Friday which also included spiritual messages usually by pastors of local Negro congregations, "Listening Time" 15 minutes daily Monday through Friday, and "Be My Guest" featuring especially groups of young people and including brief announcements of a religious character.

149. During the period 1963 to 1966 Station WOOK broadcast public service announcements on a sustaining basis on behalf of 160 national organizations and 270 local organizations.

150. A number of the foregoing programs carried by Station WOOK during the period 1963-1966 were continued during all or part of the period October 1, 1966 and October 1, 1969. In addition a number of new programs were instituted during the 1966-1969 period. Also, certain program series carried by Television Station WFAN-TV were broadcast on a simultaneous or delayed basis on Station WOOK. The religious programs listed in paragraph 9, *supra,* without regard to the itinerant ministers, were continued except for those of the new Bethel Church and Northeast Holy Trinity Church. Added religious programs were Elder Sherman Howard, Oral Roberts, Reverend Collier Johnson, Comor Memorial Baptist Church, First Baptist Church, Reverend M. L. Coleman, Reverend Mable O. Russell, Elder Sherman Church Announcements and Church News Programs. The following above described programs were continued in the 1966-1969 period: *Washington Speaks* was resumed and continued through January of 1968. *American Veterans Committee-Citizens First,* this program of 14 minutes duration, was continued on Station WOOK throughout the 1966-1969 period being broadcast a total of 130 times at 6:00 p.m. on Saturdays.

Checkpoint Community Action, this series of one- to three-minute taped public service broadcasts was continued on Station WOOK throughout the 1966-1969 period. During the 1966-1969 period, the basic idea behind Checkpoint Community Action was to approach a large number of local organizations and provide them with an opportunity to explain to the public any problem connected with their particular operation. The participant was told the number of scripts to prepare with the taping being done at the participant's convenience. *Doctor in the Kitchen* was presented 40 times during the 1966-1969 period. It was discontinued in 1969 by the producer. *Social Security Show* was presented 87 times during the 1966-1969 period. *Faith of Millions* was presented 25 times during 1966 and 1967. It was discontinued in June of 1967. *Hot Seat* was presented four times in 1966 and once in 1967. It was discontinued in January of 1967. *American Consensus* was presented nine times. It was discontinued in November of 1969. *Mutual News* was discontinued in 1969. *News With Ron Pinkney* was discontinued in September of 1967. *AM News Headlines* was continued throughout the 1966-1969 period.

151. One time special programs broadcast during the period October 1, 1966 to October 1, 1969 included Presidential addresses, special sports summary programs, coverage of the funeral of Dr. Martin Luther King, Jr., coverage of the funeral of Senator Robert F. Kennedy, specials on the Dr. Martin Luther King Memorial and the Dr. Martin Luther King proposed memorial hospital, Jesse Owens Olympic special, and a special program on the Montford Point Marine Association Scholarship Drive.

152. The same music format was continued during 1966-1969 and Station WOOK also continued its policy of carrying public service announcements, particularly for local groups. A total of 218 such announcements in behalf of national and local groups were carried on a sustaining basis.

153. New programs instituted during this period included the following: commencing in April of 1969 *Community Calendar* program was carried by WOOK. It soon became sponsored and was titled *Soul Line*. Soul Line featured the events and activities of more than 450 local organizations. The Soul Line was conceived as a telephone service available to the public off-the-air. Station WOOK installed a series of telephones with recorded public service announcements, which could be dialed by the public just as one would dial for weather information. The telephone number was promoted on the air, caught on and a five-minute program was thereafter made from the material on the telephone tapes. *Checkpoint Interview*, a 14-minute program broadcast 113 times at 1:00 p.m. Sundays involved conversations with prominent figures in public life, with special attention being given to D.C. community leaders. *D.C. School Superintendent's Report*, a one-hour program broadcast 10 times between the dates February 23, 1969 and June 29, 1969 was originally scheduled as a monthly feature. It was then decided to run the series on a weekly basis on Sundays at 3:30 to 4:30 p.m. The format of this program was a dialogue between the moderator of the series and the Superintendent of Schools for the District of Columbia and members of his staff. At the end of this dialogue, the session was thrown open for questions from the public via special telephone lines arranged to accommodate incoming calls. *Editorials*. At the suggestion of Joseph "Tex" Gathings, Director of Television Operations for WFAN-TV and with the approval of Messrs. Richard Eaton and E. Carlton Myers, president of United and manager of the stations, respectively, beginning in June of 1969, Station WOOK commenced the broadcast of editorials. Editorials on 17 varied subjects were broadcast from June through September of 1969. Mr. Gathings was responsible for their preparation and they were discontinued after he left the employment of United in July of 1970. *D.C. Youth Questions*, a 30-minute program broad-

cast 29 times at 1:15 to 1:45 p.m. generally on Sunday during the period November 17, 1968 and September 28, 1969 was originated live over WFAN-TV and rebroadcast on Station WOOK. The program was originated by Ms. Anne Orleans now Director of Public Service and Community Activities for Stations WFAN-TV and WOOK, and accepted by Station WFAN-TV after refusal by several other Washington, D.C. television stations. The series commenced in October 1968. It presently continues on Station WOOK. The format is a question and answer setting in which a cross-section of experts in various walks of life the quizzed by high school students.

Figures from the District of Columbia Government, the federal government, prominent business figures and medical experts have appeared on this program. *D.C. Government Reports*, a weekly, half-hour program produced live by WFAN-TV and rebroadcast on Station WOOK, was originated in cooperation with the Mayor of Washington, D.C. at approximately the same time as "D.C. Youth Questions." It was broadcast at 9:00 p.m. on Sundays on Station WOOK. Purpose of the program is to promote better communications between the residents of the District of Columbia and the Government Agencies, to inculcate a sense of community participation in the democratic process and to provide a vehicle for District of Columbia Government officials to tell the community what they are doing and what they hope to accomplish in the future. This series was also formulated by the program's moderator, Ms. Anne Orleans, *Scholastic Quiz*, commenced September 25, 1969 and carried in that school year a one-half hour program similar to the *Wonder High School Quiz Series* carried in the 1963-1966 period. This program was also under the direction of Ms. Anne Orleans, was broadcast on WFAN-TV on Thursdays at 6:30 p.m. and on WOOK on Sundays at 5:30 p.m. It involved a series of elimination competitions between studnts of the various District of Columbia Junior and Senior High Schools with the grand prize for the Sen-

ior Highs being a $2000 scholarship given by Sears, Roebuck. Grand prize for the Junior Highs was a television console, with lesser prizes also being awarded both. *Check Point Fourteen—Community Roundtable,* initially ½ hour in length and then extended to one hour, presented live on WFAN-TV and rebroadcast on Station WOOK. It began August 22, 1969, was moderated by Ms. Anne Orleans and was broadcast at 7:00 p.m. on Fridays. The emphasis of the program was to give exposure to the citizens of Washington working in the community to attack community problems. Guests included members of such organizations as the League of Women Voters, Change Incorporated, the D.C. Tenants Council and City of Hope.

Programming of Station WFAN-TV (formerly WOOK-TV)

154. The following programs noted *supra* were simulcast or broadcast by Stations WFAN-TV and WOOK: Washington Speaks, Hot Seat, Tune In Your Schools, D.C. School Superintendent's Report, Wonder High School Quiz, Editorials, D.C. Youth Questions, D.C. Government Reports, Scholastic Quiz and Checkpoint Fourteen—Community Roundtable.

155. Station WFAN-TV carried "Buyer Beware," the first local consumer protection program in Washington, D.C. This program worked with the neighborhood consumers' information center and in 1971 won the AAUW Mass Media Award.

156. Beginning in January of 1967, a program entitled *Controversy* was carried by Station WFAN-TV from 10:00 p.m. to 1:00 a.m. Monday through Friday. The program's format included a moderator (John Hightower), telephone call-ins by viewers and appearances by various community leaders as guests.

157. For a brief time during December 1967 and January 1968 Station WFAN-TV carried the "Norman Ross Show" from 8:00 to 8:30 p.m. on Sundays. The format of this program was similar to that of "Controversy." Later in 1968, Mr. Ross became the host of a new program entitled "Checkpoint 14" which replaced the program "Controversy" initially broadcast Monday through Friday from 7:00 p.m. to 9:30 p.m. and later from 7:00 to 10:00 p.m. The program continued into 1970 with the record showing a listing of guests and topics too numerous to detail. Basically the "Checkpoint 15" series was devoted to an examination of public issues in American life, with attention focused primarily on issues of concern to the residents of the District of Columbia.

158. From May 23, 1967 through July 15, 1967, a series called "Complaint Department" was broadcast from 5:30 to 6:00 p.m., Monday through Friday, a total of 35 segments. Letters and calls were requested from viewers concerning their problems with municipal services and their dealings with merchants in which dissatisfaction arose. Upon receipt of a complaint, the studio attempted to contact the relevant officials or merchants involved, invite them to appear on the program to explain the deficiencies, and, if possible, to offer remedial action.

159. During 1968-1969 Station WFAN-TV cooperated with the Government of the District of Columbia's City Hall Complaint Center through the broadcast of spot announcements. Acknowledgement of WFAN-TV's contribution was expressed in writing on October 3, 1969 by the Co-Chairman of the City Hall Complaint Center. Station WFAN-TV's use of the City Hall Complaint Center "spots" was credited with having resulted in 8000 calls being received in the "past year."

160. *Checkpoint 14* was a one-half hour program series broadcast live on WFAN-TV. The series started October 20, 1969 under the direction of Ms. Anne Orleans, Director

of Community Affairs for WFAN-TV and WOOK Radio and was also designed to promote the District of Columbia's City Hall Complaint Center. Personnel of that agency and individuals helped by it appeared as guests. Telephone lines were provided to accommodate inquiries about the Center from members of the audience. It was broadcast every third Monday at 7:00 p.m. and continued into 1970.

161. *Today's Look* was a series of one-half hour live programs at 6:30 p.m. on Mondays which began in August of 1967 and continued until recently. The series was designed for women and gave special attention to the arts, the world of fashion, and the career world. The program was hosted by Ms. Connie Lawn and included general discussions with guests. Topics included discussions of a wide variety of subjects on current world and community problems in addition to those involving the above noted types of topics.

162. In an effort to serve the needs and interest of ethnic groups in the Washington area Station WFAN-TV broadcast the following Italian and Greek language programs: beginning in February of 1968 and continuing to the time of hearing *Varieta Italiano* from 7:00 to 8:00 p.m. on Sundays; beginning in March of 1968 and continuing to the time of hearing *Hellenic Hour* from 6:00 to 7:00 p.m. on Sunday and *Greek-American TV Hour* from 9:00 to 10:00 p.m. on Sundays.

163. *Insight* was a series of 15 programs broadcast from 8:00 to 8:30 p.m. on Sundays, from September 19, 1964 to June 4, 1965. It was designed to demonstrate the achievements of prominent Black citizens of Washington, D.C. by tracing their early upbringing and family life.

164. The following were termed "Miscellaneous Public Service Programs": *Aunt Mary's Birthday Party,* from 2:45 to 3:00 p.m. on Saturdays, live, between January 11, 1964 and October 24, 1965 (90 broadcasts); *Education: Choice or Chance?,* from 7:30 to 8:00 p.m., Fridays, live,

between February 28 and May 13, 1966 (8 broadcasts); *Frontiers of Science,* from 7:30 to 8:00 p.m., Saturdays, on film, between August 7 and December 10, 1965 and between July 7 and December 20, 1966 (39 broadcasts); *Topic,* from 10:00 to 10:30 p.m. on Wednesday, on film, between April 17 and May 1, 1963, between January 11 and October 24, 1964 and between January 14 and February 11, 1965 (58 broadcasts); *Charm School,* a one-half hour weekly program broadcast live and carried for almost two years; *Recreation Department Series,* a special series of one-half hour programs presented in the spring of 1966; *Wonderful World of WOOK,* a series of one-half hour programs, live, broadcast for approximately six months prior to 1966; *Live Art in Washington,* from 7:00 to 8:00 p.m. on Sundays from October 1967 to February 1968 (16 broadcasts); *Theater Week,* from 6:00 to 6:30 p.m. on Fridays, commencing in April 1969; *Books of the Hour,* on Sundays from 6:30 to 7:00 p.m., commencing in October, 1967; *Teen Talk,* from 7:00 to 7:30 p.m. on Fridays, live, approximately 60 times between June 17, 1966 and February 28, 1967; *Sub-Teen Time,* Tuesdays, Thursdays and Saturdays from 6:30 to 7:00 p.m., from July 2, 1966 to January 31, 1967; *Teen Talent* from 7:30 to 8:30 p.m. on Saturdays, for one month, a live remote broadcast from the Howard Theatre; *Television Teenarama,* a 90-minute program Monday through Saturday from 5:00 to 6:30 p.m. from October 2, 1963 to the time of hearing.

165. Between 1963 and 1966 Station WFAN-TV broadcast announcements on a sustaining basis in behalf of 119 national and local public service and governmental organizations.

Ascertainment of Community Needs and Problems by United

166. The order of designation notes "that United's application for renewal of the WOOK license is incomplete

in that it does not contain specific references to consultations with community leaders for the purpose of determining the ways in which the station could better serve the public other than interviews with a limited number of leaders appearing as guests on the station's programs. Moreover, the application does not reflect suggestions which United may have received as to how the station could help meet the area's needs." An issue to determine these matters, accordingly, was specified.

167. The record shows that the station's staff usually takes the opportunity to discuss particular problems with the guests on various programs and to determine whether progress has been made in the solution of these problems. Community organizations notify the station of their meetings to secure publicity for the meetings and for possible news coverage which brings these meetings to the attention of the station. Members of the staff also belong to a number of community organizations and attend their meetings regularly.

168. A survey of community leaders was initiated in March of 1969 and contemporaneous surveys of the general public were completed by The Pulse Incorporated and by Gale Associates in April of 1969. United's president, Mr. Richard Eaton, the general manager of Stations WOOK and WFAN-TV, Mr. Myers, and the operations director and vice-president for programming of Station WOOK, Mr. Clifton D. Holland, selected the individuals to be interviewed as community leaders. The Pulse survey was made in 17 random Negro sampling points in the D.C. area and consisted of 339 homes in which either the male or female head of the household was interviewed. Those interviewed were 194 males, 145 females. The Gale survey included 250 persons residing in the D.C. area with the predominantly Black sections being the target areas.

169. Mr. Holland personally conducted 25 of the 32 community leader interviews. He has been a resident of Washington, D.C. since 1933, attended Howard University in Washington, D.C. and has been an employee of Station WOOK since 1947. In addition to his general familiarity with the composition of Washington, D.C. and the surrounding area arising from these personal associations, he consults the United States Census Reports whenever they are released to determine how the composition of the community has changed from the previous Report. At the time of his testimony he believed the population of the District of Columbia was approximately 840,000 persons based on the 1960 U.S. Census, that 72% of the population of the District of Columbia is Black according to the 1970 U.S. Census and 95% of the students enrolled in the grade schools, high schools and secondary schools are Black.[29] The principal industry is the Federal Government with tourism and printing being the next largest industries.

170. A number of educational institutions are located in the District of Columbia, including the District of Columbia public schools, universities and technical schools. Higher educational institutions include the Washington Technical Institute, Howard University, George Washington University, Georgetown University, Federal City College, and D.C. Teachers' College.

171. A large number of the Black residents of Washington are members of the Baptist faith. In recent years a large number of Washington residents have been going into the Catholic and more formal churches, but a large segment of the community attends churches of the smaller sects, individual churches and "store-front type churches."

172. There are a great number of civic organizations in Washington, D.C. with the Urban League, the National Association for the Advancement of Colored People, Black

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[29] These figures do not correspond with the 1960 and 1970 U.S. Census figures though the 72% figure is close to the 1970 Census figure of 71.1%.

United Front, and other "front" organizations being Black oriented.

173. In the course of the interviews of civil leaders emphasis was placed on ascertaining community problems. Mr. Holland analyzed the reports and found a great deal of uniformity in terms of the principal problems cited by the interviewees, particularly housing, employment, education, crime and communication. Although various interviewees ranked the problems differently, there was a general consensus that the three greatest problems in Washington, D.C. area are crime, housing and education. Other problems noted were employment, youth, interpersonal relations, police-community relations, transportation, apathy, funds, facilities, narcotics, over-population, home rule and voter registration.

174. The Pulse survey was conducted in order to determine the attitudes of the Negro community in reference to what they would like to hear on the radio and was made on an in-home basis. The survey included. *inter alia*, the following question: What community problems would you like to hear discussed on the radio? The responses to this question were, in order of frequency, as follows: police and crime, housing and ghetto problems, community development, schools and education, jobs-employment, narcotics and drugs, sanitation, and welfare-poverty program.

175. The Gale survey was made as an on-the-street survey. The survey contained, *inter alia*, the following question: What community problems do you want discussed on radio? The responses to this question were, in order of frequency, as follows: jobs, schools, crime, city government, police, housing, transportation and traffic.

176. The results of the Pulse and Gale surveys were reviewed by Messrs. Eaton, Myers and Holland. Generally, the lists of problems which resulted from these surveys corresponded to the lists of problems analyzed by Mr.

Holland as a result of the community leader surveys. As a consequence, United on April 30, 1969, filed with the Commission an amendment to its application for renewal of the license of Station WOOK to specify the programming on which these assessed needs would be covered. These included the aforenoted programs Checkpoint Community Action, Checkpoint Interview, D.C. Youth Questions, Social Security Show, Community Calendar, Soul Line, D.C. School Superintendent's Report and Message of Hope. School Administration Report was also proposed to be initiated and was to be a 15-minute weekly program on which officials of the school administration, including school board members would report on proposals and activities of the D.C. school system. The record does not show that this program was instituted.

Washington Community Broadcasting Co.

177. The officers, directors and stock subscribers of Washington Community Broadcasting Co. are as follows:

Name	Office	Stock interest by percent
John B. Duncan	Chairman of the board and director	[1] 4.66
Marjorie M. Lawson ...	President and director ..	[2] 4.66
James Patrick Hayes ..	Vice president and director	.63
Tyler Abell	Treasurer and director .	[3 4] 4.66
Jacqueline Robinson ...	Secretary and director .	[5] 3.26
Theodore R. Hagans, Jr.	Assistant treasurer and director	4.66
Richard L. Sippel	Assistant secretary and director	None
Victor L. Assevero	Director	[3] 4.66
G. Franklin Edwards ..	Director	.93
Pauline V. Hinton	Director	[3 4] .93

Alec C. Levin	Director	[4] 4.66
Richard K. Lyon	Director	4.66
Edward C. Mazique	Director	.93
R. Grayson McGuire, Jr.	Director	[3] 4.66
Luvie Moore Pearson	Director	[3] 4.66
Waddell R. Thomas	Director	[4] 4.66
Jack Anderson		[4] .93
Norman Bernstein		[4] [6] 4.66
Joseph Borkin		[4] [6] 4.66
Phillip C. Brooks		[4] 4.66
Todd Duncan		[5] .32
Gladys Duncan		(6)
Thomas C. Fichlander		[5] .63
Zelda D. Fichlander		
Norma June Fowler		.93
Isaac Franck		.32
Paul S. Green		[4] [5] .93
Clarence D. Hinton		[4] .93
E. Franklin Jackson		[4] 4.66
Albert B. Kelley		[4] [5] .93
W. John Kenney		[4] .93
William Otto McClarrin		6.18
Dale Miller		[4] .93
H. Carl Moultrie		.93
William Neal		[4] .93
John A. Nevius		[4] .93
John W. Pehle		[4] [6] 2.33
Alvin F. Robinson		[4] [5] 3.26
Lewis W. Shollenberger		.93
James Simpson [7]		.93
Lynnette Taylor		2.66
Sterling Tucker		.95
Frank W. Waldrup		[4] [6] 2.33

[1] Any claims for comparative purposes under broadcast experience and integration of ownership with management for John B. Duncan were waived. (See FCC 70M-903).

178. *Marjorie M. Lawson*, a resident of Washington, D.C. since 1935, was born in Pittsburgh, Pennsylvania. She holds a bachelors degree in Sociology and Social Work from the University of Michigan. In 1935 she was employed by the Washington, D.C. Board of Public Welfare; in 1943-46 was Assistant Director and later Director of the Division of Review and Analysis of the President's Committee on Equal Employment Opportunity. In 1956 and 1957 she was an advisor to Senator John F. Kennedy in the field of race relations and in 1960 was director of the civil rights division of the Kennedy-Johnson campaign. She attended law school in Washington, D.C. and in 1950 graduated from the School of Law at Columbia University in New York, New York. In 1962 she was appointed to the bench

[2] Marjorie M. Lawson is voting trustee for Lynnette Taylor, but for comparative consideration is deemed to hold only a 4.66% stock interest. (See FCC 71M-1535)

[3] The positions of these stockholders as directors are not to be considered under integration of ownership with management. (See FCC 70M-903)

[4] Community, during the course of the discovery procedures disclaimed all reliance under the comparative consideration for these stockholders. (See United Exhibit 61)

[5] Alvin F. and Jacqueline Robinson assumed the stock subscription of R. Frank Jones of 1.86%, but for comparative consideration is deemed to hold only a 2.33% stock interest each. (See FCC 71M-1746.)

[6] These stockholders were released by Community of further stock liability upon their paying up their pro rata share of $80,000 and agreed that their stock ownership as here shown is to be adjusted downward in case of a grant. (See FCC 70M-903)

[7] The record contains no biographical data on James Simpson. He first became associated with Community by amendment filed January 9, 1969.

[8] Joint.

of the Juvenile Court of the District of Columbia. She resigned in 1965 to resume the private practice of law. She was thereafter appointed Vice-Chairman of the President's Commission on Crime in the District of Columbia and as United States representative to the United Nations for the Commission on Social Development where she served until 1969. In 1966 she was appointed by President Johnson to one of the advisory councils of the National Institutes of Health where she served until September 1970. She also served on President Nixon's Task Force on Urban Renewal. At the time of hearing she was a member of the Commission on the Organization of Government of the District of Columbia. She is a director of the National Bank of Washington and a partner in various housing projects. In Washington, D.C. she helped organize, and served without fee as General Counsel, the Model Inner City Community Organization (MICCO) which is made up of some 200 local community groups in the Washington, D.C. Shaw project area which petitioned the planning agencies of the District of Columbia for an urban renewal plan. As president of the corporation, in the beginning, she would be in daily contact with the station manager and expects to devote "a good deal of time" to the station in arranging its financial affairs, and hiring a staff. She would also participate in programming in the sense of securing participants on panel discussions and in designing programs especially on juvenile delinquency, housing and fair employment practices.

179. *James Patrick Hayes* was born in New York City. Following graduation from Harvard University he held various positions prior to being employed in 1938 by Civic Concert Surveys, which led to his coming to Washington to be manager of the National Symphony Orchestra. He is a member of the board of that organization. He was chairman for 10 years of the cultural development committee of the Board of Trade. In 1960 he won the Washington award of the Public Relations Society for outstanding cultural

service. He has been honored by membership in the Cosmos Club and a room in the John F. Kennedy Center for the Performing Arts has been named the Patrick Hayes Room. The University of Wisconsin Theatre Research Center has assembled a Patrick Hayes collection of his scripts, speeches and other papers. He has been decorated by the French Government as a Chevalier in the Order of Arts and Letters for services and cultural terms due French artists and companies in the United States. He was one of the organizers and first president of the National Association of Concert Managers (now the International Association of Concert and Festival Managers) and is now its vice-president. He founded the Washington Performing Arts Society and is a member of the Board of Directors and managing director of that organization. Through foundation grants and public gifts the Society presents without charge programs of professional musicians, singers and dancers in the District of Columbia. He is a director of the Washington Arena Stage, has served as a trustee of the Philip Stern Family Fund and served as a director of the Washington Area Council on Alcoholism. He is a member of the District of Columbia Commission of the Arts and at the time of hearing of the Citizens Council of George Washington University. Since 1949 he was [sic] had a weekly 10-minute program broadcast by Radio Station WGMS at 1 p.m. on Sunday. The program "People and Events in the World of Music" is a talk program described by its title. He would devote on an average four hours a week to the proposed operation in program planning, particularly in the area of trying to bring available artistic events of music and dance into the schools. He is a board member of the D.C. National Bank.

180. *Jacqueline Robinson* was born in Boston, Massachusetts and is presently a resident of McLean, Virginia. Prior to moving to McLean she had resided in Washington, D. C. for 30 years. She is president of the Jack and Jill of America Foundation. She is a past president of the

local chapter and a past vice-president of the national organization of Jack and Jill of America, Inc., a group of about 7,000 mothers which funds the Jack and Jill of America Foundation. The purpose of both organizations is to improve opportunities in education for the children of members of the organization academically, culturally and socially. It also engages in projects involving children who are considered capable of doing work but lack motivation, especially among lower and middle income Blacks, Mexicans and American Indians. She formerly served on the Board of the D.C. Cancer Society for three or four years and of the Mental Health Association for about 12 years. She worked with maternal and child welfare in the District with the Medical Society Auxiliary, has been president of the Howard University Faculty Wives Club and has been active in the District of Columbia Chapter of Girl Friends. She would devote the equivalent of three days a week "to the program planning" of the proposed station in collaboration with stockholders Norma June Fowler and Pauline V. Hinton. This time would be used in securing participants on the proposed local programming and participating "to some extent" as a moderator or interrogator.

181. *Theodore R. Hagans, Jr.* was born in Washington, D.C. and attended Howard University, majoring in electrical engineering. He graduated from Connecticut University in marine engineering and from the Maritime Turbo-Electric School at Sheepshead, New York. During World War II he served as a Lieutenant Commander in the Merchant Marine. He was vice-president and general manager of Dunbar House, Inc. until it was disposed of and is now managing it under contract with the Relocation Land Authority. He has been chief engineer of Emergency Hospital, the Harrington Hotel and American Linen Service. He holds a number of real estate interests which are managed by Hagans Management Company of which he is president

and 90% owner. He is a member of the Board of Directors of Potomac Electric Power Company and of the Public National Bank. His civic activities include member of the Boards of the National Symphony Orchestra; Metropolitan Washington Board of Trade; Appeals and Review Board of D.C.; past member Steam and other Operating Engineers, D.C. Board of Examiners; Board member of the Junior Citizens Corps; past Board member of Washington Center for Metropolitan Studies; past Board member of United Planning Organization; Board chairman of the Small Business Development Center; Board member of the Health and Welfare Council and chairman of its Anti-Poverty Committee; assistant treasurer of the Model Inner City Community Organization; Board member of Stoddard Baptist Home; Interracial Council for Business Opportunity, Consultants Committee member; Regional vice-president of the Nationwide Hotel Association; former vice-president of the D.C. Chamber of Commerce; and former vice-president of the Business and Professional Association. He could devote up to eight hours per week helping in operation of the station.

182. *Victor L. Assevero,* who was born in Trinidad in the West Indies, came to Washington, D.C. in 1944. January 1, 1956, he became a naturalized citizen of the United States. He obtained a medical degree from Howard University in Washington, D.C. and worked at D.C. General and Freedman's Hospitals. He thereafter spent two years in Hamlet, North Carolina and from 1953 to 1955 served in the United States Army Hospital in Germany. He is a member of a number of professional organizations and of the Children's Hospital in Washington, D.C. He has served on the Joint Planning Committee of the District of Columbia which consists of the Public Health Director, the Superintendent of Schools of the District of Columbia and other individuals from various societies. Through the Commission on Food Poisoning in Children he has ap-

peared on television programs and has published articles on school health and on hospital care in the Washington area. Dr. Assevero estimated he could devote about six hours a week to the operations of the radio station in developing programs. This mainly would be making tapes in his home in his medical specialty of pediatrics.

183. *G. Franklin Edwards* was born in Charlestown, South Carolina, did his undergraduate work at Fisk University and has a graduate degree from the University of Chicago. He has been on the faculty of Howard University since 1941 where he is a professor of Sociology and until recently was Chairman of the Department. He is a member of the District of Columbia Sociological Society; the Eastern Sociological Society; the American Sociological Society of which he is a fellow; Population Association of America; Race Relations Institute of South Africa and the American Academy of Political and Social Sciences. He is author of a book on the Negro professional class, edited a book on Race Relations and has had articles published in professional journals. He has been a member of the National Capital Planning Commission and retired as Chairman in June 1971. He has been a "long-time" member and on the Board of Directors of the Washington Planning and Housing Association, is a member of the Washington Home Rule Committee and is active in his neighborhood civic association. He would give an average of two to four hours a week to the formulation of programs in Negro history and Negro community experience and would participate on panel programs.

184. *Pauline V. Hinton* was born in Washington, D.C. She attended Howard University, Freedmans Hospital School of Nursing and Northwest Institute of Medical Technology in Minneapolis, Minnesota. She holds a degree in Medical Technology and was employed intermittently as a medical technologist at Freedmans Hospital for about 15 years. In 1964 she established the Professional Adjust-

ment Services, unpaid bills, and is its vice-president and manager. She was public relations officer for MICCO when it was first formed. Other civic activities include board member of the D.C. Mental Health Association for about ten years [30]; board member of the Junior Citizens Corps; board member of the Hospital for Sick Children; member of the D.C. Medical Society Auxiliary; member of the Washington Performing Arts Society; member and past President of Howard University Faculty Wives Club; former national corresponding officer of Jack and Jill of America, Inc. and board member of the Jack and Jill of America Foundation. (See paragraph 180, *supra*.) She would be able to give up to three days per week to the proposed operation by helping map out programs for review by the station, in securing program participation by members of the community and personal participation as a moderator or interrogator.

185. *Edward Craig Mazique* was born in Natchez, Mississippi. He is a graduate of Howard University Medical School and has been practicing medicine in the District of Columbia since 1941. He is also a member of the Board of Directors of the United Community National Bank. In addition to membership in a number of professional organizations he is a former member of the Citizens Advisory Council to the Commissioners of the District of Columbia, board member of the Washington Home Rule Committee, member of Advisory Board of the Visiting Nurses Association, member of Board of Management of Y.M.C.A., vice-president and Board of Directors of Hospital Service Agency, member Advisory Committee of Southeast Neighborhood House, member of the Community Chest Federation Board of Directors and executive committee and member of the executive committee of the NAACP. Dr. Mazique

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[30] This organization now has a "rotating board" and Mrs. Hinton will be off the board for a period of one year.

has received a number of awards, including one in 1968 for outstanding community service from the D.C. Federation of Citizens Associations.

186. *R. Grayson McGuire, Jr.* was born in Washington, D.C. and has resided in the Washington, D.C. area since birth. He attended Dartmouth College and Howard University. He is president of the McGuire Funeral Service, Inc. In addition to membership in professional organizations, he has been active since 1947 in various civic, religious, governmental and charitable groups too numerous to detail. Over these years he has also served either as an elected officer or board member of the following: John Carroll Society, Saint Vincent DePaul Society, Mu-So-Lit Club, Junior Police and Citizens Corps, Pigskin Club, D.C. Arthritis and Rheumatism Association, D.C. Chamber of Commerce, Metropolitan Washington Board of Trade, Better Business Bureau, WETA-TV, Washington National Symphony, Citizens for Police Recruitment, Cardinal's Committee of the Laity, Commission on Human Resources of the Center for Metropolitan Studies, Cardinal's Pastoral Commission and Model Inner City Community Organization (MICCO). Mr. McGuire could devote approximately two hours per week to the proposed operation. Duties to be performed if other than those as a director, are not stated.

187. *Luvie Moore Pearson* was born in Hanover, Germany, the daughter of a United States Army officer on active duty. She is presently a resident of Washington, D.C. Her civic and related activities include volunteer worker, teaching remedial reading for Urban Services; Ladies Aid during World War II; WARDS; member of Ladies Board for the Smithsonian; and volunteer worker for Planned Parenthood Metropolitan Washington, D.C., Inc.

188. *Waddell R. Thomas* was born in Washington, D.C. and has resided there since 1909. He is a graduate of Howard University and Terrell Law School. Mr. Thomas is president of Metropolis Realty and Investment Co. and active in real estate appraisal and other realty operations. In addition to a number of professional groups, he is a member of the D.C. Chamber of Commerce; University Neighborhoods Council; Rock Creek East Civic Association; Urban League; NAACP; CORE; former board member of the Washington Planning & Housing Association; (board member) District of Columbia Condemnation Review Board; Health & Welfare Council (membership committee); and the Board of Directors of Columbia Hospital.

189. *Jack N. Anderson*[31] was born in Long Beach, California and has resided in Washington, D.C. since 1947. He is the author of the newspaper column "Washington Merry-Go-Round" and is a radio and television commentator. Mr. Anderson's column is carried on a daily or weekly basis by over 500 newspapers in the United States, and approximately 50 newspapers outside the United States. Included are newspapers in every state in the United States and in virtually all large cities in the United States. The column appears daily in the larger cities and weekly in the smaller communities. In the Washington area the Washington Post carries Mr. Anderson's column. Mr. Anderson's broadcast program is carried by approximately 50 stations, most of which are in large metropolitan areas. In the Washington area Mr. Anderson has a radio program carried by Station WTOP and is featured in a series of 2½-minute television programs carried five times a week on Station WTTG(TV). Mr. Anderson's newspaper column and broadcast programs are available to members of the public throughout the

[31] United contends the association of Mr. Anderson with Community must be weighed adversely under the diversification of ownership of mass media factor. Community has disclaimed reliance on this stockholder for comparative purposes. (See footnote 40, *supra*).

United States to such a degree as to include virtually 100 percent of the population.

190. *Todd Duncan* was born in Danville, Kentucky. He holds degrees from Butler University (B.A.); Columbia University (M.A.); Doctor of Music (Honorary) Howard, Central State and Butler Universities; and Doctor of Humane Letters, Valparaiso University. Mr. Duncan is a concert vocalist and has appeared in recitals in the United States, Europe, Asia, South America and New Zealand.

191. *Thomas C. Fishlander* was born in New York. N.Y. and has been a resident of Washington, D.C. since 1936. From 1960 to the present time, Mr. Fichlander has been Executive Director of the Arena Stage, and is active in the American National Regional Theatre Movement. He is secretary of the League of Resident Theatres and vice-president of the Washington Drama Society. He has been active in the supervision of the Kreeger Theatre in addition to the Arena Stage.

192. *Zelda D. Fichlander* was born in Boston, Massachusetts and has been a resident of the Washington, D.C. area since 1928. Since 1949, Mrs. Fichlander has been producing director of the Arena Stage. She was co-founder of the Arena Stage in 1950 and has produced 130 and directed 31 of its productions. She is also involved in "Living Stage 70" an improvisational touring company directed by Robert Alexander.

193. *Norma June Fowler* was born in Detroit, Michigan and has been a resident of Washington, D.C. since 1961. Mrs. Fowler is involved in a number of charitable, civic and political activities including the Black Man's Development Center on Adult Rehabilitation; Sickle Cell Anemia; Police Boys Club; Wolf Trap Foundation in Vienna, Virginia, past co-chairman for the Ball of the Mental Health Association; board member of the YMCA; and member of the Southern Christian Leadership Conference. For a period of one year

Mrs. Fowler helped in the production of a black television show entitled "Harambee" broadcast by Station WTOP-TV 8:00 to 9:00 a.m. Monday through Friday. She programmed and directed one show the "Black Soldier", did a daily two-minute medical commentary and secured public participants for the show. Mrs. Fowler would devote three days per week to the proposed operation, principally in securing public participants in programming through her daily civic activities.

194. *Isaac Franck* was born March 1909 in Russia. He became a United States citizen by naturalization February 14, 1936. Mr. Franck has resided in the Washington, D.C. area since 1949, is Executive Vice-President of the Jewish Community Council of Greater Washington and a professorial lecturer in philosophy and sociology at American University. He is a member of the American Philosophical Association; the American Association for the Study of Public Opinion; the American Science Association; the American Sociological Society; the Association of Jewish Community Relations Workers; the National Association of Intergroup Relations Officials; the National Association of Social Workers and the Academy of Certified Social Workers; the National Conference of Jewish Communal Service and the National Council for Jewish Education.

195. *William Otto McClarrin,* the proposed full-time station manager was born in Atlanta, Georgia. At the age of six years he moved with his mother to Philadelphia, Pennsylvania where he attended elementary and high school, then moving to Washington, D.C. There he received a B.A. degree at Howard University in 1940 and completed the academic requirements for an M.A. degree in Public Relations and Communications at American University in 1955. He had additional study at Graphic Sketch Club in art in Philadelphia; the New School of Social Studies in New York, N.Y. in public relations; the Department of State Foreign Service Institute in Washington, D.C.; and the

Army Air Force Aviation Cadet Program. Mr. McClarrin has won numerous awards, including awards from Delta Phi Delta Journalists Association, Associated Collegiate Press Annual Competitions, Capital Press Club, American Alumni Council, and United States Commission on Civil Rights. Mr. McClarrin has been employed as a columnist, newspaper reporter, and editor; has worked at Howard University as Director of Public Relations (1950 to 1956 and 1969 to 1970); has been employed by the United States Information Agency; the U.S. Commission on Civil Rights; has served as a public relations counselor to a number of clients for a combined period of five years; and is presently in public relations work with the Office of Economic Opportunity. He is a member of the National Press Club, Public Relations Society of America, National Alumni Council, American Alumni Council, College Public Relations Association of America, NAIRO, Capital Press Club, Advertising Club of Metropolitan Washington, Gourmets and Consorts. He is Chairman, Public Information Committee, Health and Welfare Council of the National Capital Area (UGF); member, Public Relations Committee, American Red Cross; member, Health and Welfare Council's Board of Directors; member, Citizens Advisory Committee, D.C. Zoning Commission; and member, Advisory Council, Public Schools of the District of Columbia. Mr. McClarrin has had extensive newspaper experience and has participated in radio and television programming. He participated in the weekly Television Workshop series at Station WMAL-TV in Washington as a graduate student at American University for approximately two years. His radio experience includes a series of weekly broadcasts which he conducted in 1939 while an undergraduate student at Howard University over the facilities of Station WINX. He also instituted a series of campus newscasts over the university's wired facility. An assistant in charge of publicity for Howard University, in 1940 he developed half-hour and quarter-hour programs which were broadcast regularly by Stations

WINX and WWDC. In 1955 Mr. McClarrin broadcast Monday through Friday at noon a daily news program carried directly from his office at Howard University by Station WINX. At that time Station WINX was licensed to a corporation controlled by Mr. Richard Eaton, the sole stockholder of United Broadcasting Company, Inc. At various times he has prepared radio scripts as part of his employment and commencing in 1963 prepared and distributed at his own expense a series of 5-minute radio programs designed to motivate Negro youth to higher levels of achievement. This series was discontinued, but in 1966 he broadcast at his own expense a half-hour show on Station WUST and a quarter-hour program on Station WOL. These were discontinued when he joined the staff of the O.E.O. in that year.

196. *H. Carl Moultrie,* now a resident of Washington, D.C., was born in Tampa, Florida and educated in Charleston, South Carolina; Lincoln University, Pennsylvania; New York, N.Y. and Washington, D.C. He is a practicing attorney in Washington, D.C. In 1970 he became affiliated with Capitol Television seeking rights to a CATV franchise in Washington, D.C. It is his understanding that the application is being held in abeyance, pending a decision on the right of the District of Columbia to issue a franchise. Mr. Moultrie has received a number of awards over the years. In addition to a number of professional organizations, he is a member of the Hackers Appeal and Review Board of Washington, D.C.; the Greater Pigskin Club of Washington, D.C.; the Executive Committee of the D.C. Citizens for Public Education; Board of Directors of O.I.C.; Advisory Committee on Education Programs; National Conference of Christians and Jews; Correctional Advisory Council; the Community Advisers on Equal Employment; Interreligious Committee on Race Relations; Board of Directors of Neighborhood Legal Services Project; Board of the District of Columbia Tuberculosis and Respiratory Disease Association; Board of Washington Urban Coalition; May

or's Committee on Public Safety and on Urban Coalition; the Board of the D.C. Commission on Academic Facilities; the Bureau of Rehabilitation of the National Capital Area; the Board of Northeast Neighborhood Council, Inc.; and the Advisory Council of Independence Federal Savings and Loan Association.

197. *Lewis W. Shollenberger,* now a resident of Washington, D.C. was educated in Ravensfield College and Grunewald Gymnasium in Berlin, Germany and at Penn State University, where he gained a B.A. degree in economics and political science. During World War II he served in the United States Navy. Thereafter he was employed as a correspondent with CBS News and UPI and as a director of news operations for ABC News. Mr. Schollenberger has also worked as an Information Officer for the Federal Reserve System and with Radio Limited in Munich, Germany as a director of programs and as executive director. From the latter post, he returned to Washington and in 1966 formed the Washington Broadcast News Service, supplying various radio and television stations throughout the United States with Washington News. He is presently employed by the Advertising Council, Inc. He is a member of a number of professional organizations and has received an award from the National Education Association for a series of broadcasts that he did with the National Association of Television Arts and Sciences. Mr. Shollenberger could help Washington Community in its radio operation nights and weekends if the station "faced a crisis."

198. *Lynnette Taylor* is a resident of Washington, D.C. She holds a degree from Wayne State University in School Administration and School Community Relations and served in several capacities in Michigan State educational institutions. In connection with this employment she received a number of awards. In Detroit, Michigan she engaged in a number of civic activities and is engaged in a number of such activities in Washington, D.C. including the

Volunteer Services Advisory Committee of the Health and Welfare Council; member of the Board of the Washington Educational Television Association; volunteer Chairman of College and Youth Services for the Washington, D.C. Chapter of the American Red Cross; member of the Advisory Committee of the Federal Reserve Bank; Hospitality and Information Service for Foreign Diplomats and Visitors; American Newspaper Women's Club; International Honor Society for Women Educators; NAACP; Urban League; and Executive Director of Delta Sigma Theta, Inc., a predominantly Negro Public Service organization of college women having chapters in 42 states, Liberia, West Africa and Haiti.

199. *Sterling Tucker* was born in Akron, Ohio. He has resided in Washington, D.C. since 1956. He received his B.A. in 1946 and his M.A. in 1950, both from the University of Akron. Since 1956 Mr. Tucker has been Executive Director of the Washington, D.C. Urban League. In 1968 he became Director of the Field Services Department of the National Urban League, Inc., and from 1969 to the present he has been Vice-Chairman of the District of Columbia City Council. Mr. Tucker is presently serving on the Advisory Council of the National Chamber of Commerce and is an officer or board member of more than two dozen local and national organizations, a member of the Academy of Certified Social Workers, and is on the faculty of the School of Social Work at Howard University. In 1965, he received the Washington Junior Chamber of Commerce's Outstanding Young Man of the Year Award.

Washington Community Financial Qualifications

200. In order to build its proposed station, and operate for three months,[32] Washington Community Broadcasting

[32] The Review Board, in a memorandum opinion and order released November 16, 1970, FCC 70R-382, rejected United's con-

Co. will require $300,000 broken down as follows: $42,395.16 for equipment; $50,000 for prosecution of the application; $137,500 for three months of operation; and approximately $70,000 for various contingencies. To meet its proposed costs of construction and operation, Washington Community relies upon a bank loan from the National Bank of Washington. Marjorie Lawson, President of Washington Community, requested a $400,000 loan by letter dated September 21, 1971, with the expressed willingness of 9 of its stockholders to guarantee the loan in various amounts. By letter dated October 8, 1971, William C. Yowell, Jr., Executive Vice-President of the bank, expressed the bank's willingness to lend Washington Community $400,000 in the event of a grant of its application. The loan would be for a period of three years with interest at the rate of 1% above the prime rate. The loan will be payable interest only during the first year, with the balance amortized monthly over the remaining two years. By letter dated October 4, 1972, also over the signature of William C. Yowell, Jr., the loan commitment was extended for a period of one year.

201. The loan requires guarantees by Mrs. Marjorie M. Lawson, Tyler Abell, Edward C. Mazique, John B. Duncan, Alvin F. Robinson, Theodore Hagans, Jr., Victor L. Assevero, Richard K. Lyon, Waddell R. Thomas, and their wives or husbands. Additionally, the stock of Washington Community would have to be pledged as collateral for the loan.

202. The following stockholders of Washington Community together with their respective wives or husbands, have expressed their willingness to guarantee the bank loan in accordance with their commitment and to pledge their stock

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tention that Washington must show sufficient funds to operate for one year. A 3 month test is used when an applicant seeks to supplant an existing licensee with an established history of revenue. *Orange Nine, Inc.*, 7 FCC 2d 788.

as collateral for the loan and have agreed to the October 4, 1972 extension: [33]

Waddell R. Thomas	$50,000
Marjorie M. Lawson	50,000
Victor L. Assevero, M.D.	25,000
Richard K. Lyon	10,000
John B. Duncan	50,000
Edward C. Mazique	50,000
Tyler Abell	100,000
Alvin F. Robinson, M.D.	50,000
Theodore R. Hagans, Jr.	50,000

203. On October 8, 1971, Washington Community accepted the conditions specified by the bank in its loan commitment letter.

Section 1.65 Issue Relating to Washington Community

204. Issue 13 is designed to elicit information concerning alleged omissions and failures to report in Community's original application, subsequent filings, or in timely amendments, as required by Rule 1.65, (a) certain information concerning the financial position of Dr. Phillip C. Brooks, a stockholder of the applicant (FCC 69R-398); (b) certain information concerning the communications and other business interests of various of the applicant's other stockholders (FCC 72R-17); and (c) the alleged failure of Community to timely report the tendered resignation of its assistant secretary who was also a director (FCC 72M-1450).

205. By letter dated October 11, 1968 the Commission requested Community to file additional financial information and directed its attention to Section III, Paragraph

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[33] Partial net worth statements were submitted both initially and with affidavits of acceptance of the extension which indicate these individuals have substantial net worths.

4(d) of the application form which calls for submission of a balance sheet or financial statement by each person who has agreed to furnish funds or purchase stock. In response to this request Community filed amendments January 8, 1969 which included a "net worth statement" dated August 28, 1966 for Dr. Brooks giving a net worth of $97,000.[34] The statement included liquid assets in the amount of $115,000 and total liabilities of $18,000. The statement had been personally executed by Dr. Brooks in 1966 and forwarded to Community at that time. On February 15, 1968 Dr. Brooks signed a production credit agreement pledging all farm machinery and all "cattle, dairy, beef and other types" on a farm owned by him to the Production Credit Association of West Kentucky to cover an unspecified liability. Two federal tax liens against Dr. Brooks and his wife were filed with the Christian County Court Clerk at Hopkinsville, Kentucky on June 28, 1968 and August 9, 1968 totalling $91,934.72. At the time of adoption of FCC 69R-398 two additional federal tax liens had been filed on February 24, 1969 and March 12, 1969 representing an additional $20,816.76 making a total of $112,751.48. These assessments were for the calendar years 1958 through 1967 with the earliest assessment date being November 9, 1967 and the latest date being November 8, 1968.[35] On the basis of these facts it was ruled that "Although the filing of the 1966

[34] On this same date Dr. Brooks executed an "Income Statement" stating net income, after Federal Income Tax, for each of the past two years, was in excess of $20,000. This statement was filed as a part of the application in Docket No. 18560 which was dismissed by order (FCC 70M-622) released April 28, 1970. (Official Notice taken)

[35] Dr. Brooks testified that these notices existed at the time the partial net worth statement was filed in 1966. On the basis of the certified copies of the notices (United Exhibit 62) this testimony is obviously in error. Tax assessment totalling $212,000 were in litigation which were subsequently compromised for $90,000.

balance sheet for Dr. Brooks in the January, 1969 amendment did not constitute a full disclosure, the undisputed circumstances surrounding that filing dispel any reasonable inference of intentional wrongdoing . . ." but that the failure to report these matters did raise a "substantial question" under 47 CFR 1.65.

206. Dr. Brooks is the owner of Brooks Memorial Hospital in Hopkinsville, Kentucky. He is a subscriber to 200 shares of Community stock representing a 4.66% interest. The August 28, 1966 partial statement of net worth was prepared and forwarded to Community at its request in connection with his original subscription. At the time he executed the statement Dr. Brooks knew it to constitute an incomplete list of his liabilities, but understood that all that was wanted was a partial financial statement to indicate the ability to take care of his obligation. No one in Community informed him otherwise or how to fill out the statement nor was he informed by Community that it was necessary to report changes in his financial condition. Shown a form letter dated October 15, 1968 purporting to have been sent to all stock subscribers by Community's counsel requesting up-to-date financial data, Dr. Brooks testified he did not receive it.

207. On February 17, 1969 Dr. Brooks gave Community's communication counsel a financial statement as of November 15, 1967 when counsel and Dr. Brooks' accountant came to Hopkinsville. This statement was prepared by Dr. Brooks' accountant from a statement drawn up by the Internal Revenue Service reflecting Dr. Brooks' net worth for income tax purposes in the years 1963-1967. Community's assistant secretary and general counsel, however, did not consider this statement current enough to file with the Commission and on October 7, 1969 again requested a current statement by certified mail. At the time of the assistant secretary's testimony on October 14, 1971 he had not received a current statement. Because of the difficulty of

securing a current statement from Dr. Brooks, the statement of August 28, 1966 was used for the January 8, 1969 amendment.

208. At the beginning of the Community organization and thereafter at corporate meetings, counsel advised that Section 1.65 of the Commission's Rules required complete information as to business interests and that any change in such interests that was substantial and significant was to be reported to the Commission. The need for reporting communications interests was emphasized. Communications counsel also wrote the stockholders "regularly every year or so" for information as to such changes. A number of changes, however, occurred of which Community's general counsel and assistant secretary were not timely informed. Accordingly, a new letter of inquiry was sent to the stock subscribers and the assistant secretary and general counsel of Community submitted the results of this inquiry by amendment of January 1972 as follows: (a) In the case of Theodore R. Hagans, there was no change in the general nature of his business, which was real estate ownership and management. Unreported changes, however, had occurred in that he had sold the New Dunbar Hotel to the Relocation Land Authority but continued managing it for that agency; he had become half owner of several apartment buildings all of which he managed through the Hagans Management Company; he had been elected to the positions of director of the Potomac Electric Power Company and of the Public National Bank. A number of changes had also occurred in his associations with local organizations in that he had become a member of the Board of the National Symphony Orchestra; of the Metropolitan Washington Board of Trade; of the Appeals and Review Board of D.C.; of the Junior Citizens Corps; and he had become inactive or resigned from the Board of Examiners of Steam and Other Operating Engineers, from the Board of the Washington Center for Metropolitan Studies and from the Board of United Planning Organizations. (b) For Waddell R.

Thomas there was no change in the general nature of his business which was also real estate ownership and management. Unreported changes had occurred, however, in that he had become a director and officer of Central City Property Management and of Dolphin & Evans Settlement, Inc. and held a 12% and 7% ownership interest, respectively, in these firms. He had resigned from the Board of Metropolitan Washington Planning and Housing Association and from the Fee Appraisal Panel of FHA. (c) W. J. Kenney, a practicing attorney, had not reported becoming counsel to the law firm of Cox, Langford and Brown. (d) Richard K. Lyon, a practicing attorney, had not reported his ceasing to be a director of two business corporations. (e) John W. Pehle, a practicing attorney, had not reported his election as a director of a business corporation. (f) James Patrick Hayes had not reported becoming a member of the Board of the D.C. National Bank or his resignation as a trustee of the Philip M. Stern Family Fund. (g) Marjorie M. Lawson had not reported her election to the posts of member of the Board of National Bank of Washington, the Board of the Mayor's Committee on Economic Development, the Committee on the Organization of the D.C. Government, her resignation as general counsel of MICCO, or her partnership in various housing projects. (h) Lewis W. Shollenberger had not reported his change of employment from the Small Business Administration to the Advertising Council, Inc. (i) John A. Nevius had not reported his retirement from private law practice to become Deputy Assistant Secretary of Housing and Urban Development. (j) Otto McClarrin had not reported his change from the public relations office of Howard University to return to public relations work at the Office of Economic Opportunity. (k) John B. Duncan had not reported the change of status of agent and one-third partner of Housing Development Association or his appointment to the advisory board instead of being on the Board of Directors of Big Brothers, Inc. (l)

Tyler Abell had not reported acquisitions of interests in Capital Gazette and Aero-Planning International, Inc.; his election to the Boards of Weston Leasing Corporation (equipment leasing) and Continental Energy Corporation (oil exploration) and his resignation from Board of Four Star International. (m) H. Carl Moultrie had not reported his affiliation with an applicant for a CATV franchise in the District of Columbia for the reason that it was his understanding that the application was being held in abeyance as there had been no decision as to the right of the District of Columbia to license CATV operations.

209. Also relevant to the 1.65 issue is the failure of Community to timely advise the Commission of the resignation of Newton Frohlich as Assistant Secretary, a director and general counsel of Community. This resignation occurred May 10, 1972 at which time the record had been closed. Proposed findings of fact and conclusions of law had not been filed. Community, however, did not give notification of this change within the 30-day period specified in Section 1.65 of the Rules and on June 30, 1972 filed its proposed findings of fact and conclusions of law including therein findings purporting to show that Mr. Frohlich held these positions. September 11, 1972 United filed its motion to reopen the record to note Mr. Frohlich's withdrawal together with Community's failure to report this change and at this time Community was forced to disclose the change. It was a change of sufficient importance to require reporting under the provisions of Section 1.65 of the Rules with the omission being compounded by Community representing in its proposed findings of fact, filed almost two months after Mr. Frohlich tendered his resignation, that he remained in these positions. Community uses the technicality that the resignation had not been formally accepted by its Board of Directors and accordingly contends it would have been a futile imposition on the time of all concerned to seek reopening of the record at that time merely to show the tendered resignation. This, however, provides no valid

basis for failure to comply with the requirements of Section 1.65 of the Rules in addition to being factually inaccurate. The failure to timely report this change resulted in an additional series of pleadings requiring disposition (see FCC 72M-1178) in addition to the series of pleadings arising out of Community's motion for leave to reopen the record and acceptance of amendments to show, *inter alia*, the resignation of Mr. Frohlich disposed of by order FCC 72M-1450.

Conclusions

210. In this proceeding United Television Company, Inc. seeks renewal of license for Station WFAN-TV and issuance of a construction permit for change of transmitter, change of transmitter site, to increase the effective radiated power and to make related changes in the facilities of Station WFAN-TV. United Broadcasting Company, Inc. seeks renewal of license of standard broadcast Station WOOK, Washington, D.C. Washington Community Broadcasting Co. seeks a construction permit for a new standard broadcast station to operate on the facilities presently licensed to Station WOOK. No change in site, power or tower height is proposed. The application, therefore, is mutually exclusive with that for renewal of license of Station WOOK.

211. Other than to the extent included in issue 4, *supra*, no disqualifying issue as to United Television Company, Inc. was specified in the designated issues. The ownership of United Television Company, Inc. and of United Broadcasting Company, Inc. being identical, however, in defining the scope of the designated issues the presiding officer ruled that United must first establish "that grants of the renewal applications would serve the public interest. Only in the event it carries this burden will it be entitled to comparative consideration . . ." [36] (FCC 69M-1455 released Novem-

[36] As shown in footnote 1 *supra*, the application of Washington Community Broadcasting Company for the facilities licensed to Station WFAN-TV was pending at the time of this ruling.

ber 10, 1969) In response to a further motion to clarify it was again ruled that the order of designation "does place in issue the basic qualifications of both United Broadcasting Company, Inc. and of United Television Company, Inc." (FCC 70M-1160 released August 25, 1970). For the same reason, i.e., identical ownership and management of the two stations and the character qualifications issues involved, the Review Board by order FCC 70R-253 corrected released July 28, 1970 denied a petition for severance and grant of the applications of United Television Company, Inc. The conclusions here reached as to the basic qualifications of United apply equally to United Television Company, Inc. and to United Broadcasting Company, Inc.

212. Considering first the religious programming of Station WOOK, United does not dispute the fact that in the course of some programs such articles as Conquer Roots, Money-Drawing Roots and Spiritual Baths were offered to the public. Nor does it question that in the course of a number of such programs three-digit scripture references to be used for "financial blessings" were offered. It does not now question that these scripture references were references to the numbers game though asserting a complete lack of knowledge both as to this fact and, as noted in paragraph 53, *supra,* of the existence of a numbers game until raised by Community in the course of this proceeding. It had throughout, however, adhered to its position that all such references, including those to the numbers game, were legitimate religious expressions subject to the protection of the first amendment to the constitution of the United States. It, therefore, asserts that the truth or falsity of these statements and the claims made cannot be challenged as we are here "dealing with recognized religions and their ordained representatives. Nor is there any question but what all the representations here at issue, including those with respect to the off the air role of the preachers as in the words of *Ballard* [*United States* v. *Ballard,* 322 U.S. 78, 1944] 'divine

messengers' for conveyance of revelations concerning winning numbers, are matters of their religious belief. Indeed, all the challeneged representations were actually made in sermons. And as the court noted in the *Scientology* case [*The Founding Church of Scientology of Washington, D.C.* v. *United States* 409 F 2d 1146, clarified on reconsideration 409 F 2d 1163] a man's religion is what he says it is:" . . . It is therefore urged that "The short answer to the inquiry posed by Issue 1 is that the representations at issue are precluded by the free exercise clause from the kind of scrutiny suggested by the issue once they are determined to be good faith representations of ministers in sermons. With respect to the numbers references aspect of this Issue, it might also be noted that quite aside from the free exercise problem there are grave philosophical shortcomings in the kind of White paternalistic moral protectionism implied by an effort to spare the poor and the Black the wages of their folly. While it is clear that playing the number is illegal, that is not at issue under Issue 1 in this case. What was put in issue by the petition to deny was the question whether WOOK should be penalized because these broadcasts encouraged gambling and prevarication. . . . The legality of numbers is not the issue but quite simply the judgment that, given the odds against winning, the poor and Black should be prevented from squandering their money by affirmative governmental action *over and beyond* the enforcement of existing statutory prohibitions on certain types of gambling. Moreover, the fact that the predilection of the congregants of WOOK's ministers is shared by the general populace of the D.C. area was attested to by the Police Department itself. The Police Department estimates that daily participation in only the *one form of illegal* gambling represented by the numbers involves 75 percent of all residents of the entire metropolitan area." [37]

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[37] This estimate was the personal opinion of Sergeant Raymond James McKernan, assigned to the Gambling Branch of the Morals

213. United, however, misconceives the thrust of Issue 1. It has no constitutional obligation to open its facilities to all comers. Nor does it have statutory obligations to do so such as those going with common carrier operations. It is the arbiter of who uses the WOOK facilities. The issue is simply whether, even if legitimate religious expressions, it was a disservice to the public to permit use of the facilities of Station WOOK to broadcast the programs encompassed within Issue 1? As to those involving the numbers tips, the licensee itself recognizes they would tend to encourage its listening audience to engage in illegal gambling. And there can be no question that the only way members of the station's audience could avail themselves of the "financial blessings" promised in the course of these many burdens was through the medium of playing the numbers tips given and playing the numbers is a violation of law. As recognized by Professor Klausner these programs would necessarily tend to encourage listeners to play the illegal numbers game in order to receive the benefits described. And United as licensee of Station WOOK is wholly responsible for the uses made of its facilities. Moreover, accepting United's assertion that it was completely unaware of the significance of these references to the numbers game until the filing by Community on June 23, 1969 of a petition to enlarge issues, its course of action thereafter was one of callous disregard of the use these ministers were making of the facilities of Station WOOK. The programs were continued with the only change being that the references to Bible chapters and verses be eliminated. It was concluded that the station had no responsibility as to what transpired at the religious services or as a consequence of contacts

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Division of the Metropolitan Police Department of the District of Columbia. No study or estimate has been made by the Police Department of the extent of public betting on the numbers. Moreover, Sergeant McKernan's opinion was that 75 percent participate, not every day, but from time to time. (T-226, 227)

either in person or by mail arising out of these broadcasts and no investigation was made in these areas. Community did make such investigation and found that the practice of giving numbers tips in return for a "donation" or "offering" was being continued by at least two of these ministers and United must have been aware of this fact if it made any review at all of content of the programs broadcast.

214. United predicates its position in part on the position of the Metropolitan Police Department that neither the sale nor possession of the tip sheet publications noted in paragraph 18, *supra*, is a violation of District Law and accordingly the tips given by these ministers cannot involve a violation of law. This position has not been legally tested in the District of Columbia. In a proceeding in the United States District Court E. D. Michigan, S. D., however, involving an identical publication "The Greensheet" it was stated as follows:

> In short, here is a device, the tip sheet, serving a purpose of catering to those wishing to participate in the numbers racket. It suggests and advises as to successful participation in the unlawful operation itself. It is stipulated, indeed, that it actually does both promote and stimulate such gambling. Upon these facts it would be a perversion of both language and logic for us to hold that such a device does not "facilitate" the unlawful operation the promotion of which it serves, and the furtherance of which it stimulates. *United States of America* v. *Joseph Azar et al* 243 F. Supp. 345 (1964).

Defendants were found guilty of violation of Section 1952 of the United States Code, though the publication was ruled to be within one of the exceptions of Title 18 Section 1953 which prohibits the interstate transportation of wagering paraphernalia as it was "within the ambit of any newspaper or similar publication." The effect of the tips given by these ministers in stimulating violation of the anti-

gambling laws is even more insidious than such tip sheet publications as here the ministers' claims were that they gave winning numbers tips through divine intervention. And the Commission has made clear its policy with reference to such use stating "We would, of course, be concerned with any improper use of broadcast stations to further any illegal gambling activities. . . . These considerations [absence of specific rules] do not detract in any way, however, from our long-established concern that broadcast stations not be used to aid illegal gambling." *Report and Order In the Matter of Amendment of Part 3 of the Commission's Rules to Regulate the Broadcast of Horseracing Information* 36 FCC 1571, 2 RR 2d 1609. It is concluded that these broadcasts which offered to give three-digit scripture references to be used for financial blessings were false, misleading and deceptive. Moreover, they constituted an improper use of the station in the furtherance of illegal gambling activities through the promotion and stimulation of such gambling. And United took no effective steps to prevent such use of the WOOK facilities indirectly following admitted knowledge of the practice and institution of the policy of precluding direct references on the bases noted in paragraphs 56 and 57, *supra*.

215. United did have a reasoned policy with reference to the offering of articles such as Conquer Roots, Money-Drawing Roots and Spiritual Baths on these religious programs. On one program Bishop Bonner tied the use of his "special money-drawing root" to the numbers game and in this instance Mr. Von Blasingame did inform him this program was a violation of station policy. Otherwise the articles appear to have been offered solely as religious talismen carrying the religious symbolism attached to numerous articles and relics by various religions. It accordingly is concluded that the offering of these articles was within the commonly accepted concept of the attributes attached to such articles and relics and did not constitute false, misleading or deceptive advertising.

216. Issue 3 requires determination of whether the broadcast of the numbers tips programs constituted announcements or information concerning a lottery in contravention of Section 1304 of Title 18 of the United States Code [38] and of Section 73.122 of the Commission's Rules.[39] To constitute

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[38] 18 U.S.C. 1304:

"Broadcasting lottery information

"Whoever broadcasts by means of any radio station for which a license is required any law of the United States, or whoever, operating any such station, knowingly permits the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"Each day's broadcasting shall constitute a separate offense."

[39] Section 73.122 of the Commision's Rules:

"Lotteries

"(a) An application for construction permit, license, renewal of license, or any other authorization for the operation of a broadcast station, will not be granted where the applicant proposes to follow or continue to follow a policy or practice of broadcasting or permitting 'the broadcasting of any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes.' (See 18 U.S.C. 1304.)

"(b) The determination whether a particular program comes within the provisions of paragraph (a) of this section depends on the facts of each case. However, the Commission will in any event consider that a program comes within the provisions of paragraph (a) of this section if in connection with such program a prize consisting of money or thing of value is awarded

a violation of 18 U.S.C. 1304 or implementing Section 73.122 of the Commission's Rules three elements must be present: (a) a specific existing lottery having the elements of a lottery, i.e., prize, consideration and chance must be involved; (b) there must be a broadcast of information concerning the lottery; and (c) there must be actual knowledge on the part of the licensee as "lack of knowledge would relieve the licensee of liability under the antilottery statute. . . ." *City of Jacksonville* 21 FCC 334, 410.

217. United contends initially that the numbers game in Washington, D.C. is not a specific existing lottery, that the reference is to lotteries generally as each operator conducts a separate operation and moreover the broadcast references to specific numbers were to lotteries already held citing *New York State Broadcasters Association* v. *United States* 414 F. 2d 990 (1969); *United States* v. *Halseth* 342 U.S. 277 and *France* v. *U.S.* 164 U.S. 676. In *New York State Broadcasters Associations, supra,* it was ruled that "the words of Section 1304 were patterned after the language of the mail statute which had long been narrowly construed. . . . And when it enacted Section 1304, Congress also directed the Commission to respect first amendment values. . . . Finally, as the Supreme Court has reminded us, Section 1304 'is a criminal statute' and as such 'is to be strictly construed.' . . . For all of these reasons, we think that the phrase 'information concerning any lottery' refers only to information that directly promotes a particular existing lottery." *United States* v. *Halseth, supra,* establishes that it must

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to any person whose selection is dependent in whole or in part upon lot or chance, if as a condition of winning or competing for such prize, such winner or winners are required to furnish any money or thing of value or are required to have in their possession any product sold, manufactured, furnished or distributed by a sponsor of a program broadcast on the station in question."

concern a presently existing lottery, not one that may come into existence. *France* v. *U.S., supra,* establishes that it cannot concern a lottery already held.

218. Applying these tests to the programs in question, the elements of prize, consideration and chance are unquestionably present in operation of the numbers game. As urged by United the record establishes that there are a number of separate backers or owners operating in the Washington, D.C. area and that each operates his own game, has his own employees, makes his own payoffs and keeps his own profits. There is cooperation in that all use the same winning number and may lay off bets with each other when one has a large play of a particular number. Odds paid are with minor exceptions, the same. Under these factual circumstances the enforcement body for the anti-gambling statutes regard the term "numbers game" as designating a type of game rather than a specific existing lottery. Applying the test of strict construction required under Section 1304, a similar conclusion is here dictated. Accordingly, it is concluded that the references in these broadcasts to the numbers game were references to the game generally and not to any one specific existing lottery. Consequently, no violation of Section 1304 of Title 18 of the United States Code or of Section 73.122 of the Commission's Rules is present.

219. It has been concluded that United took no effective steps to protect its listening public from use of its facilities following admitted knowledge of the use of three-digit scripture references to be used for financial blessings and that these were false, misleading and deceptive. Other matters encompassed within this issue include advertising carried for World Wide Television Corporation et al., advertising carried for Empeco Corporation and the advertising of the book Work Wonders From Within Yourself. As noted by the Broadcast Bureau and shown in the findings of fact, United was alerted by this Commission on three separate occasions prior to September of 1966 of its

responsibility as a licensee to protect the public from false, misleading and deceptive advertisements. The first instance was through the medium of the public notice re *Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising* copies of which were sent to all licensees and admittedly received and used by United in its staff instructions. The second instance involved issuance of a complaint by the Federal Trade Commission against World Wide Television Corporation et al. which were advertising over Station WOOK. Though there was no indication that the complaint related to the broadcast advertising United immediately discontinued all advertising for the firms involved. No evidence was adduced in this proceeding providing a record basis for concluding that the ads broadcast were in any manner false, misleading or deceptive or that United was derelict in its obligation to take reasonable measures to protect its listening public from such advertising.

220. United could not be faulted for its original acceptance of the Empeco advertising without investigation, the reputation of the owner as a reputable businessman being known to its sales personnel. The act, however, of having to provide the Federal Trade Commission with copies of these ads as part of that Commission's investigation should have alerted United to the possibility of the ads being false or deceptive. United continued, however, to carry this advertising for a period of ten months without further investigation on its part, the ads being discontinued only after the account had become delinquent and the station manager learned from other area media that the advertising was questionable. This does not constitute the "reasonable measures" expected under the public notice *Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising* FCC 61-1316. It, therefore, is concluded that in this instance United did not take reasonable measures to protect its listening public from false, misleading, or deceptive advertising over its facilities

and the Federal Trade Commission found this advertising had the capacity to lead the public into the purchase of substantial quantities of the merchandise so advertised.

221. Advertising of the book "Work Wonders From Within Yourself" under the circumstances shown is not a matter of substantial import. Viewed strictly from the standpoint of the guidelines established by the Federal Trade Commission for "businessmen who in good faith desire to avoid deception of the consuming public" in such advertising (*Title 16 Commercial Practices, Guides Against Deceptive Pricing* 29 Federal Register 178) it is not established that the advertised $4.00 price constituted a true bargain. Mr. Eaton made no investigation of whether this book was in fact openly and actively offered for sale at $4.95 for a reasonably substantial period of time, in the recent regular course of business in the area nor did he determine whether this list price corresponded to the price at which a substantial number of sales of the book had been made. Moreover, at the time in question no book store in the area even offered the book for sale nor is there any indication that the $4.95 price was one used in the recent past. Accordingly, viewed within these guidelines, these ads were deceptive. There, however, was no established intent by the advertiser (Mr. Eaton) to mislead the public, as noted in paragraph 84, *supra,* he did have some basis for his belief that the retail price was established at $4.95 and the number of books sold was minimal.

222. In response to Issue 5, United conducted surveys of community leaders and of a cross section of the public adequate to indicate the problems and needs that exist within the area. Principals of United participated in these surveys, the community problems found have been listed and the individuals contracted have been adequately identified. Demographic studies were submitted supporting the conclusion that representative surveys were made. The results of the surveys were compiled and evaluated and

United proposes to devote a significant proportion of its station's programming to dealing with and responsive to community problems. The title, time, duration and frequency of broadcast and descriptions of these programs have been detailed as reflected in the findings of fact. The renewal application has been amended to include this data. It accordingly is concluded that United has met its burden of proof under Issue 5.

223. Two areas of concern are encompassed within Issue 10, i.e., (1) the violations charged by the Official Notice of Violation issued to the licensee of Station WOOK in October of 1969 and the record herein with reference thereto, and (2) the Hearing Examiner's findings in *United Broadcasting Company, Inc.* 4 FCC 2d, 293 to the extent they show repeated violations of the Communications Act or the Commission's Rules. Detailed findings of fact have been made as to each of the violations charged herein and a conclusion reached, except as to charged violations 18 and 19, whether the violation charged is substantiated by the record. To briefly summarize these conclusions, the record establishes that equipment performance measurements had not been timely made (alleged violation 1); that results of daily observation of tower lights were not entered in the operating logs on the 11 specified dates[40] (violation 2); that the station authorization was not posted as required (violation 3); that the most recent antenna resistance measurement data was not available on request (violation 4); that at least three weeks of the maintenance logs were not produced on request though later located and forwarded to the inspecting engineer (violation 5); that at the time of commencement of the inspection at 12:15 p.m. on September 3, 1969 the operator had failed to make the

[40] As noted in paragraph 94, *supra*, the logs from May 1, 1969 through September 3, 1969 (the data of inspection) were used for preparing the notice of violations, a total of 126 days.

required entries in the operating log at an interval not exceeding 30 minutes from the prior entry in that the last entry was as of 11:30 a.m. (violation 6); that the engineer in charge was not notified of operation with reduced power on the main transmitter on the dates of June 3 and 4, 1969 (violation 7); that 293 corrections in the operating logs were improperly made at various times on the 18 specified dates representing a total of .96% of all entries for the dates covered by the inspection (violation 8); that the antenna currents shown in the operating log show the station was operated with a power which was more than 5% above authorized power at various hours on 12 of the 82 days charged (violation 9); that the antenna currents shown in the operating log show the station was operated with a power which was more than 10% below authorized power at various hours on seven of the 25 days charged (violation 10); and that the maintenance logs for the period August 18 through August 30, 1969 did not show weekly readings of the base current ammeter and remote antenna current meter (violation 17).

224. Extensive findings of fact have been made of the measurements which formed the basis of charged violations 18 and 19 and it is concluded that the position of United with reference thereto is established by the record, i.e., that no reliance whatsoever can be placed on them. The fluctuations and abrupt changes in the chart tracings are unexplained. Those making the measurements diligently sought an explanation, but evidently found none as results of these tests were not placed in evidence. The deficiencies of the site alone detailed in paragraph 112 and 115, *supra*, make these measurements highly suspect because of the probability that it was not the signal of Station WOOK alone that was being recorded. Extraneous signals would reasonably be expected at such a mid-city site. The non-selective antenna used and the additional communications equipment at this site add substantially to this probability. Nor does the limitation of the purpose for which made

noted in paragraph 111, *supra,* render the tracings competent to establish these violations absent evidence establishing that the fluctuations and abrupt changes in the tracings were not a consequence of extraneous signals, that it was in fact only the signal of Station WOOK that was being recorded. Violations 18 and 19, accordingly, are established only to the extent established by the testimony of the operators involved. Violation 18 is charged to have occurred on 22 occasions over a period of 13 days. The operators on duty on 13 of these occasions testified and one violation was admitted. Violation 19 charged failure to reduce power at local sunset on 9 days in August of 1969 as required under the terms of the station authorization. Testimony of the operators establishes such violations on two of the nine dates charged with the operator on duty for a third date having no recollection of whether he was late in changing power.

225. *In the proceeding In re Application of United Broadcasting Co., Inc. For Renewal of License of Station WOOK* 4 FCC 2d 293, 19 alleged violations were charged as a result of an inspection of Station WOOK on March 8, 1961. Ten were concluded to have been established by record evidence. None of those established duplicates any of the charges here involved. As a result of an inspection on August 9, 1961 five violations were charged of which four were established by record evidence. One, failure to timely change from daytime to nighttime power duplicates violation 19 herein. As the result of an inspection on January 9, 1962 eight violations were charged of which six were established by record evidence. Of these, four duplicate violations 2, 8, 10 and 19 herein. As a result of an inspection on July 8, 1964 sixteen violations were charged, of which 13 were established by record evidence. Of these 4(a) duplicates violations 9 and 10 herein and 4(b), 10(b) and 14 duplicate violation 19 herein. As a result of monitoring United was issued an official notice of violation on January 14, 1965 for failure to operate in compliance with the

terms of the license for Station WOOK in that changeovers from daytime to nighttime and nighttime to daytime power were not made on two dates on the times specified in its license. This charge which duplicates violation 19 herein and logging errors were established by record evidence.

226. The significance of the violations established by the record must be considered in the light of the previous notices of violation, the prior renewal hearing and the forfeiture assessed. In that proceeding it was concluded forfeiture was appropriate, it being stated "To sum up, a record of violations in equipment, engineering performance, and log keeping is established. But it was not proved that management wanted it that way or that it didn't care one way or the other. Under these circumstances, the search for explanation may profitably and importantly yield to an appraisal of what may be expected from here on. At every turn, the record shows evidence of corrective effort after irregularities uncovered at inspection were brought to Mr. Eaton's attention. By the process of citation and purification, the station appears to have been dragged into the modern era where equipment and other technical advances have simplified steady attachment to the fulfillment of operational obligations. . . . With the record putting nonrenewal out of legitimate reach and since a short-term license or a cease and desist order would register as not very assertive tokens of official displeasure, there remains only the possible imposition of forfeiture of money. Even if, as supposed in this opinion, Mr. Eaton and his Station WOOK convince that they have now successfully completed the full course, forfeiture is in order—not out of any sense of insisting upon a measure of flesh from this licensee but because there must emerge a bracing message from an inquiry as lengthy, costly and distracting as this has been over the years. . . ."A forfeiture of $7500 was assessed.

227. The findings of fact reflect the abandonment by United of the automatic equipment which it represented in the previous proceeding had been installed to assure technical compliance in the operation of Station WOOK. The Initial Decision in that proceeding became effective June 23, 1966 and the special technical advisor hired in order to assure technical compliance in the operation of United's various stations died approximately one year later. He was not replaced until November of 1970, a date subsequent to issuance of the order of designation herein and commencement of the instant proceeding. The inspection on October of 1969 disclosed the technical violations detailed herein a number of which duplicated previous violations. It is thus evident that assessment of the forfeiture above shown failed to carry the "bracing message" it was expected to convey. And in the light of United's past record in this regard little, if any, reliance can be placed in the effectiveness of the new proposals now made to assure future technical compliance.

228. Evidence was adduced of the programming of Station WOOK for the period October 1, 1963 to October 1, 1966 this being the period covered by its last renewal of license and for the period of October 1, 1966 to October 1, 1969 for Stations WOOK and WFAN-TV. The former provides the basis for United's past broadcast record to be considered for comparative purposes. To the degree found to establish "meritorious public service programming" (see order released July 16, 1970 FCC 70R-246), evidence as to both periods is to be considered in mitigation of the adverse conclusions previously set forth as to the programming and technical operation of Station WOOK.

229. As shown in the findings of fact, both Stations WOOK and WFAN-TV during the periods involved did originate a number of worthwhile programs designed to serve primarily the "Black community" and others which should have been of interest to the community as a whole.

Overall, however, its service was directed primarily to the "Black community" with its surveys of community needs also being directed principally to the "Black community." It also broadcast a number of programs produced by various organizations or groups of a meritorious nature. These included the program Washington Speaks after it was taken over by Professor Smolka, the Social Security Show, the F.B.I. Show, Faith of Millions, and Doctor in the Kitchen, all of which should have had general appeal. Weighing the overall programming showing of Station WOOK comparatively, however, the service in its entirety must be considered and in view of the evidentiary showing and conclusions previously reached relevant to its programming there was a significant failure to meet the public's needs and interests on an overall basis. The showing going to mitigation will be hereinafter weighed.

230. To meet estimated costs of $300,000 which provides a contingency fund of approximately $70,000 Community has shown the availability to it of a $400,000 loan. United asserts that the loan commitment indicates on its face that the stockholders will be required to execute guarantees "of joint and several liability" for the total sum of $400,000 which several have testified they would be unwilling to do. This contention is rejected, the record establishing that the nine stockholders detailed in the findings of fact are to guarantee severally the sum noted for each with the several guarantees totalling $435,000. It, therefore, is concluded that Community is financially qualified to construct and operate its station as proposed.

231. Issue 13 is limited to comparative consideration and Community does suffer comparative demerit for failure to keep its application up-to-date as required by Section 1.65 of the Rules. In reaching this conclusion the difficulty of keeping an application current where there are a large number of stockholders with each holding a relatively small stock interest is recognized. Community did seek through

its communications counsel and general counsel-assistant secretary to impress on the stockholders the necessity under the Commission's Rules for reporting significant changes in business interests. As found by the Review Board the failure to timely report the matters with reference to Dr. Brooks was nothing other than an inadvertent error. The failures to report the noted changes in business interests arose primarily out of misunderstandings by the stockholders involved. The failure to timely report the resignation of its general counsel who was also a director and assistant secretary of the corporation though not a stockholder came at a time when Community unquestionably should have been cognizant of the need to report this change. Weighed individually these matters would not be of major consequence. *In toto,* however, as a harbinger of possible future conduct they attain significance of sufficient statute to warrant a substantial comparative demerit.

232. Comparatively under the factor of diversification of control of the media of mass communications, Community must be preferred as its ownership presently holds no such interests. United seeks to equate to the numerous media associated with Mr. Eaton the newspaper and broadcast activities of Mr. Jack Anderson, a .93% stock subscriber of Community. These activities, however, are of no significance in the context of this proceeding. The only association of Mr. Anderson with Community is that of a less than 1% stock subscriber holding no corporate office and proposing no participation whatever in operation of the proposed station. Moreover, being the author of a newspaper column and having a broadcast program regardless of how widely distributed carries no significance in this context absent evidence that they in some manner give Mr. Anderson some degree of control over the media carrying this column or the broadcast program. There is no record evidence giving such indication.

233. Neither applicant shows substantial full-time participation in station operation by the owners. Mr. Richard Eaton, the sole owner of United, is at the station at least once a week and is in daily contact with the station manager. He also originates and broadcasts his daily 15-minute program "Message of Hope" and regularly reviews the programming, sales and public service policies of the station. He is a local resident and has many years of broadcast experience as owner and operator of multiple broadcast facilities. He shows no participation in civic activities. Mr. William Otto McClarrin, the largest single stockholder of Communty (6.18%) would devote full time to the proposed operation as station manager. He is not an officer or director of Community. He is a local resident, shows extensive participation in civic activities and has experience in the production and broadcast of radio programs, but no prior experience in broadcast management capacities. Other stockholders, four of whom are officers and directors, having a total stock interest of 21.57%, propose part-time participation of from three days per week on the part of three to a "good deal of time" on the part of one. In the case of one proposing to devote two hours per week to the proposed operation, no duties are defined other than his being a director. The others all propose participation in the development and production of various types of programs including the securing of participants from community organizations for these programs. All have outstanding records of civic participation, all are residents of the area to be served and two have slight experience in program production. None would hold staff positions and, other than those who are officers and directors, none would have policy functions or important roles in management. Comparatively, there are no differences warranting a conclusion of comparative superiority of one over the other in this factor.

234. Considering the entire record developed in this proceeding it is concluded under Issues 10(b) and 10(c)

that United Broadcasting Company, Inc. and United Television Company, Inc. possess the requisite qualifications to remain Commission licensees. Carelessness and negligence unquestionably are shown in the technical operation of Station WOOK and it has been concluded that little reliance can be placed in the steps now proposed to assure technical compliance in the operation of Station WOOK. It is not of such degree, however, as to warrant absolute disqualification. It is further concluded under Issue 10(c) that in light of the evidentiary record developed under Issue 10(a) and the fact that continued operation of Station WOOK is here assured through the medium of the competitive application of Community, that United Broadcasting Company, Inc. does not possess the requisite comparative qualifications to remain a Commission licensee. In reaching these conclusions full consideration has been given to the showing of meritorious programming on the part of Stations WOOK and WFAN-TV. Despite continuing financial losses and its failure to receive authorization for improvement of its technical facilities, United Television Company, Inc. did broadcast a large number of meritorious local programs. Moreover, no questions have been raised with regard to compliance with the technical requirements of the Commission's Rules in the operation of that station. Programs of merit broadcast by Station WOOK have been noted in paragraph 229, *supra,* and have here been given full consideration.

235. Pursuant to Commission direction that all issues be fully resolved in an Initial Decision conclusions have been drawn as to the standard comparative showing of the applicants under Issues 7, 9 and comparative demerit has been Community under Issue 13. Under the standard comparison the diversification factor favors Community with the integration factor giving no basis for choice. It is concluded that the preference accorded Community under the diversification factor is balanced by the demerit assessed under Issue 13. The choice between these applicants, therefore, rests solely on the comparative disqualification of United Broadcasting Company, Inc.

236. In view of the foregoing findings of fact and conclusions and upon consideration of the entire record in this proceeding, it is concluded that a grant of the application of Washington Community Broadcasting Co., subject to the condition specified in the order of designation, and denial of the mutually exclusive application of United Broadcasting Company, Inc. would best serve the public interest, convenience and necessity. It is further concluded that the public interest, convenience and necessity would be served by grant of the applications herein of United Television Company, Inc. subject to the condition specified in the order of designation and subject to the condition that final action on these grants be withheld pending dispositive action in the proceeding *In the Matter of Revocation of License of United Television Co. et al.,* Dockets No. 19336, 19337 and 19338 and pending dispositive action in the proceeding *In re Applications of Friendly Broadcasting Company,* Docket No. 19412.

Accordingly, It Is Ordered, That unless an appeal from this Initial Decision is taken by a party to the proceeding, or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Rules, the application herein of United Broadcasting Company, Inc. Is Denied, the application herein of Washington Community Broadcasting Co. Is Granted, subject to the condition that "Permittee shall accept such interference as may be imposed by existing 250 watts class IV stations in the event they are subsequently authorized to increase power to 1000 watts" and the applications of United Television Company, Inc. herein Are Granted subject to the following conditions:

That construction of the new facilities shall not commence until Richard Eaton, the owner of Station

WFAN-TV, has disposed of all of his interest in Station WMET-TV Channel 24, Baltimore, Maryland, and

That final action on these grants is withheld pending dispositive action in the aforenoted proceedings in Sockets No. 19336, 19337, 19338 and 19412.

FEDERAL COMMUNICATIONS COMMISSION,
FOREST L. MCCLENNING, *Administrative Law Judge.*

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
SEPTEMBER TERM, 1976

No. 76-1570

UNITED BROADCASTING COMPANY, INC., *Appellant*
v.
FEDERAL COMMUNICATIONS COMMISSION, *Appellee*
WASHINGTON COMMUNITY BROADCASTING CO., *Intervenor*

Appeal from an Order of the
Federal Communications Commission

(FILED JULY 8, 1977)

Before: Bazelon, Chief Judge, Robinson, Circuit Judge and Davies*, United States Senior District Judge for the District of North Dakota

Judgment

This cause came on to be heard on the record from the Federal Communications Commission, and was argued by counsel. On consideration of the foregoing, it is

ORDERED AND ADJUDGED by this Court that the order of the Federal Communications Commission on review herein is hereby affirmed, for the reasons set forth in the opinion of this Court filed herein this date.

Per Curiam
For the Court:
GEORGE A. FISHER, Clerk
By: /s/ ROBERT H. BONNER
Robert A. Bonner
Chief Deputy Clerk

Dated: July 8, 1977
Opinion Per Curiam.

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* Sitting by designation pursuant to Title 28, U.S.C. § 294(d)

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
SEPTEMBER TERM, 1976

No. 76-1507

UNITED BROADCASTING COMPANY, INC., *Appellant*

v.

FEDERAL COMMUNICATIONS COMMISSION, *Appellee*

WASHINGTON COMMUNITY BROADCASTING CO., *Intervenor*

(FILED AUGUST 8, 1977)

BEFORE: Bazelon, Chief Judge; Robinson, Circuit Judge and Ronald N. Davies, United States Senior District Judge for the District of North Dakota*

Order

On consideration of the petition for rehearing filed by appellant United Broadcasting Company, Inc., it is

ORDERED by the Court that appellant's aforesaid petition is denied.

Per Curiam
For the Court

/s/ GEORGE A. FISHER
George A. Fisher
Clerk

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* Sitting by designation pursuant to Title 28, U.S.C. § 294(d)

APPENDIX G

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
SEPTEMBER TERM, 1976

No. 76-1507

UNITED BROADCASTING COMPANY, INC., *Appellant*

v.

FEDERAL COMMUNICATIONS COMMISSION, *Appellee*

WASHINGTON COMMUNITY BROADCASTING CO., *Intervenor*

(FILED AUGUST 8, 1977)

BEFORE: Bazelon, Chief Judge; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, Robb and Wilkey, Circuit Judges

Order

The suggestion for rehearing *en banc* filed by appellant United Broadcasting Company, Inc. having been transmitted to the full Court, and no Judge having requested a vote with respect thereto, it is

ORDERED by the Court, *en banc,* that appellant United Broadcasting Company, Inc.'s aforesaid suggestion for rehearing *en banc* is denied.

Per Curiam
For the Court

/s/ GEORGE A. FISHER
George A. Fisher
Clerk

Supreme Court, U. S.
FILED
DEC 22 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-651

UNITED BROADCASTING COMPANY, INC.,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
AND
WASHINGTON COMMUNITY BROADCASTING CO.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE WASHINGTON COMMUNITY BROADCASTING CO., IN OPPOSITION

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December 1977

THE CASILLAS PRESS, INC.–1717 K Street, N. W.–Washington, D. C.–223-1220

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

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UNITED BROADCASTING COMPANY, INC.,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE WASHINGTON COMMUNITY BROADCASTING CO., IN OPPOSITION

OPINIONS BELOW

The decision of the Court of Appeals, not yet reported, appears at Pet. App. 1a-2a. The Commission's decision (Pet. App. 1b-30b) is reported at 55 FCC 2d. 416. Petitions for reconsideration and rehearing of the Commission decision were denied May 28, 1976 (Pet. App. 1c-7c) as reported at 59 FCC 2d. 663. The Initial Decision of the ALJ (Pet. App. 1d-154d) is reported at 55 FCC 2d 431.

JURISDICTION

The judgment of the Court of Appeals was entered on July 8, 1977 (Pet. App. 1a-2a). Petitions for rehearing were denied on August 8, 1977 (Pet. App. 1f and 1g). The petition for certiorari was filed on November 4, 1977. The jurisdiction of this Court was invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Court of Appeals had a rational basis for affirming the Commission's denial of Petitioner's license renewal for violations of the Commission's technical rules, designed to assure good engineering practices. (Petitioner claimed that the Commission's decision was "no more than conclusory, providing the reviewing court with virtually no analysis whatsoever of the FCC's reasoning".)

2. Assuming question 1 is answered in the affirmative, and since there was no constitutional question as to these technical violations, whether the Court of Appeals was correct in refusing to consider the other grounds of the FCC decision as to some of which constitutional questions were raised.

COUNTER STATEMENT OF THE CASE

Renewal of the radio broadcast license of Petitioner was challenged in a hearing on five issues as set out in Pet. Brief, pp. 4-5. Issues 1, 2 and 3 related to whether certain station programs constituted false, misleading or deceptive advertising or were in violation of the applicable anti-lottery statute and rules (Pet. Brief, p. 4 hearing issues 1, 2 and 3). Petitioner claimed some of these issues involved possible violations of the First Amendment, especially as to

broadcasts by preachers promising tips in the numbers game and other "blessings". (Pet. Brief, pages 13-16).

Issues 4 and 5 did not relate to program content, but solely (a) whether (issue 4) Petitioner had violated Commission Rules designed to assure good engineering practices in operating the station, and (b) whether (issue 5) such technical violations reflected such negligence, carelessness or disregard of the Commission's processes that the Commission could not rely upon the licensee to fulfill the duties and responsibilities of a licensee.

THE INITIAL DECISION OF THE ALJ

In his initial decision, the ALJ made detailed findings on numerous technical violations (Pet. App. 56d through 92d and 144d through 148d). The ALJ concluded that, in light of the pendency of the competitive application of Community, Petitioner

> "does not possess the requisite comparative qualifications to remain a Commission licensee". (Pet. App. 152d).

The ALJ described the Petitioner's previous similar technical violations for which the Commission had imposed a $7500 forfeiture, *United Broadcasting Co., Inc.*, 4 FCC 2d. 293 (1966), and noted that the new violations had not been deterred by the $7500 forfeiture. (Pet. App. 146d-148d).

THE COMMISSION DECISION

On appeal the Commission concisely, but thoroughly, reviewed the initial decision. (Pet. App. 1b-30b). It found, *inter alia*, that Petitioner's promises to hire experts to prevent a repetition of the previous technical violations were mere "window dressing" (Pet. App. 17(b)); that

"United's past representations were of no value" (*ibid.*) and that "no reliance can be placed on the present promises of future compliance" (*ibid.*). The Commission then concluded that "on the basis of its violations of the technical rules *standing alone*, we find that United's application for renewal of the license of Station WOOK must be denied". (*Ibid.*, emphasis supplied).

ARGUMENT

1. The Commission's decision not to renew Petitioner's license because of Petitioner's technical violations was supported by 132 paragraphs of detailed record findings by the ALJ (Pet. App. 56d through 92d, 144d through 148d). These findings were specific and not "conclusory" as asserted by Petitioner.

2. The Commission affirmed these findings. (Pet. App. 1b through 30b). Its opinion, like the ALJ's findings, was quite specific and not "conclusory" as claimed by Petitioner.[1] The Commission concluded (Pet. App. 17b):

[1] "United's previous history of operations of WOOK has been replete with violations of the technical rules. Those violations were the subject of an earlier hearing, where United was assessed a $7,500 forfeiture, and where, in reliance on reprsentations that its future operations would be in compliance with the technical rules, United's license was renewed. 4 FCC 2d 293. Notwithstanding the forfeiture and its representations, the violations continued. A subsequent inspection on September 3, 1969, disclosed 19 violations of the Commission's rules. Although United hired experts to oversee the operation of WOOK and the qualifications of the experts are unquestioned, the first expert was not hired until after the designation of the previous hearing on issues concerning alleged violations of the technical rules in 1965, and, after the expert died in 1967, he was not replaced and responsibility for overseeing WOOK's technical operations was left to an untrained employee until November 1970, after the issues were enlarged in this proceeding to consider violations of the Commission's technical rules. Under these circumstances we must conclude that the hiring of the experts was merely 'window dressing' employed when WOOK's license was placed in jeopardy." (Pet. App. 16b-17b).

> "Thus, on the basis of its violation of the technical rules *standing alone*, we find that United's application for renewal of the license of Station WOOK must be denied". (Emphasis supplied).

3. The Court of Appeals, therefore, quite properly affirmed the Commission on the grounds of these technical operational violations alone, as to which no constitutional question had been raised. "If two questions are raised, one of non-constitutional and the other of constitutional nature, and a decision of the non-constitutional question would make unnecessary a decision of the constitutional question, the former will be decided". *Alma Motor Co. v. Timken-Detroit Axle Co.*, 329 U.S. 129, 136 (1946).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Attorney for Respondent
Washington Community
Broadcasting Company

Supreme Court, U. S.
FILED
JAN 18 1978
MICHAEL RODAK, JR., CLERK

No. 77-651

In the Supreme Court of the United States

OCTOBER TERM, 1977

UNITED BROADCASTING COMPANY, INC., PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL COMMUNICATIONS COMMISSION IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1977

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UNITED BROADCASTING COMPANY, INC., PETITIONER,

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL COMMUNICATIONS COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-2a) is not yet reported. The decision of the Federal Communications Commission (Pet. App. 1b-30b) is reported at 55 FCC 2d 416. The opinion and order of the Federal Communications Commission denying a petition for rehearing (Pet. App. 1c-7c) is reported at 55 FCC 2d 663. The decision of the Commission's Administrative Law Judge (Pet. App. 1d-154d) is reported at 55 FCC 2d 43.

JURISDICTION

The judgment of the court of appeals (Pet. App. 1e) was entered on July 8, 1977. A timely petition for rehearing *en banc* was denied on August 8, 1977 (Pet. Apps. 1f, 1g). The petition for a writ of certiorari was filed on November 4, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Commission's decision to deny petitioner's license renewal application was supported by substantial evidence.

2. Whether the court of appeals was required to decide constitutional questions raised by petitioner.

STATEMENT

Petitioner United Broadcasting Company is the licensee of radio station WOOK in Washington, D.C. In 1969 the Commission designated petitioner's application for renewal of its license for evidentiary hearing pursuant to 47 U.S.C. 309(e). *United Television Co., Inc.*, 18 FCC 2d 363. The hearing focused on three issues: (1) whether petitioner had violated the technical and engineering rules of the Commission and, if so, whether those violations "reflect[ed] such negligence, carelessness, ineptness or disregard of the Commission's processes that the Commission [could not] rely upon [petitioner] to fulfill the duties and responsibilities of a licensee" (Pet. App. 4d-5d); (2) whether petitioner had taken adequate measures to protect its listeners from false, misleading and deceptive advertising on the station; and (3) whether broadcasts of announcements concerning lotteries had been made on the station in violation of 18 U.S.C. 1304.[1]

[1]In addition to issues concerning petitioner's qualifications to remain a Commission licensee, the hearing also involved comparative issues raised by a competing application that was mutually exclusive with petitioner's renewal application for WOOK (see Pet. App. 4d). The administrative law judge, finding both applicants qualified, denied petitioner's application and granted that of the competing applicant on the basis of comparative considerations (Pet. App. 151d-152d). The Commission, however, held that the judge had erred in concluding that petitioner was entitled to comparative consideration

After a full evidentiary hearing, the administrative law judge concluded that petitioner had repeatedly violated the Commission's rules for technical operation of the station and that similar violations had been the subject of earlier Commission sanctions. See note 3, *infra*. Because of petitioner's "carelessness and negligence" in the operation of the station, and because petitioner's past performance demonstrated that "little, if any, reliance can be placed in the effectiveness of the new proposals now made to assure future technical compliance," the judge concluded that petitioner's application for renewal of the license should be denied (Pet. App. 144d, 153d).

On review, the Commission held that petitioner was not qualified to be a licensee for three independent reasons. First, it had broadcast lottery information in violation of 18 U.S.C. 1304 (Pet. App. 4b-13b). Second, it had failed to take reasonable measures to protect its listeners from false and misleading advertising for "roots," "incense" and "spiritual baths" over its facilities (Pet. App. 14b-16b). Finally, it had a long history of violations of the Commission's engineering and technical operating rules (Pet. App. 16b-17b). With respect to the violations of the engineering and technical rules, the Commission held that petitioner's "previous history of operations of WOOK [had] been replete with violations of the technical rules

(Pet. App. 3b). Thus the comparative issues formed no part of the Commission's decision.

The hearing proceeding initially involved the license renewal of petitioner's television station as well. Subsequently, that part of the proceeding was severed. See *United Television Co., Inc.*, 46 FCC 2d 698, affirmed 514 F. 2d 279 (C.A. D.C.), petition for rehearing dismissed, 61 FCC 2d 469.

* * *, that [petitioner's] past representations were of no value, [and] that no reliance [could] be placed on its present promises of future compliance * * *" (Pet. App. 16b-17b).[2]

In a *per curiam* opinion, the court of appeals affirmed the Commission's denial of the renewal application, holding that, "[I]n our view, the long history of persistent violations of those rules was a sufficient reason for disqualification" (Pet. App. 2a). The court of appeals specifically declined to consider any "other question tendered by this appeal" (*ibid.*).

ARGUMENT

The court of appeals' decision was correct. This case presents no question of general importance requiring review by this Court.

1. The Commission's decision that petitioner could not be relied upon to operate the station in accordance with the Commission's rules and, therefore, that renewal of the license would not serve the public interest is reasonable and is supported by substantial evidence in the record.[3]

---

[2]The Commission found that petitioner's previous representations of efforts to conform the operation of the station to the Commission's regulations had been "merely 'window dressing' employed when WOOK's license was placed in jeopardy" (Pet. App. 17b).

[3]While petitioner now challenges the correctness of the Commission's decision on this point (Pet. 16-19), it did not argue this issue in the court of appeals. Cf. *Lawn* v. *United States*, 355 U.S. 339, 362 n. 16.

In any event, the argument is without merit. Petitioner attempts to minimize its violations of the Commission's rules for technical operation by characterizing them as "the mere assertion of 'technical' factors" (Pet. 13), or as "minor technical violations" (*id.* at 22). In fact, the administrative law judge's initial decision demonstrated a substantial number of violations (see Pet. App. 56d-92d). Moreover,

This Court recognized in *Red Lion Broadcasting Co.* v. *Federal Communications Commission*, 395 U.S. 367, 375-377, the "chaos" that existed prior to effective federal regulation of broadcasting. Indeed, the core of the Commission's responsibility is the regulation of technical operation. If it fails in that responsibility, and stations cannot effectively communicate, any other regulation becomes meaningless. Regulation of technical operation is therefore a vital part of the Commission's regulatory duty. Thus, petitioner's assertion that violations of those rules do "not pose any * * * threat to the FCC's ability to regulate" (Pet. 22) is wrong. A licensee's failure to conform to the regulations, particularly where, as here, that failure continues after strong warnings, compels corrective action. Although petitioner correctly notes that such violations are "customarily treated by the FCC as grounds for reprimand or civil forfeiture" (*ibid.*), the Commission had already reprimanded petitioner in an

---

the Commission concluded that the judge had erred in failing to find a number of additional violations (see Pet. App. 25b-28b). The Commission rejected petitioner's attempt to minimize each individual violation: "The record establishes each of the violations, and while, if considered singly, they would not warrant the sanction imposed here, when considered as a whole and in conjunction with [petitioner's] prior violations, they become decisionally significant" (*id.* at 22b).

Furthermore, similar violations had required the Commission to hold a hearing on petitioner's 1966 renewal application for WOOK, which resulted in the forfeiture of $7,500. *United Broadcasting Co., Inc.*, 4 FCC 2d 293. This history of persistent violations of the rules was an important consideration in the decision of the administrative law judge (Pet. App. 146d-148d), the Commission (Pet. App. 16b-17b) and the court of appeals (Pet. App. 2a). "[A]n applicant's past record of station maintenance and supervision is clearly relevant to a public interest determination in a subsequent licensing proceeding." *Friendly Broadcasting Co.*, 34 FCC 2d 947, 949.

earlier license renewal proceeding and had issued a civil forfeiture; yet the violations continued. The Commission has clearly and repeatedly stated that it will not continue to use mild sanctions for repeated misconduct. If those sanctions have been imposed, and the licensee spurns the opportunity to improve its performance, nonrenewal is the proper course. See *United Broadcasting Co. of Florida, Inc.*, 55 FCC 2d 832, 841, reconsideration denied, 60 FCC 2d 816, 820; *Star Stations of Indiana, Inc.* 51 FCC 2d 95, 96-97, 109, affirmed *sub nom., Star Broadcasting Inc.* v. *Federal Communications Commission*, 527 F. 2d 853 (C.A. D.C.), certiorari denied, 425 U.S. 992.

2. There is no occasion for this Court to reach petitioner's contention (Pet. 13-16) that the Commission required it "to establish that claims made in [its] religious broadcasts were true [and] that [the] spiritual teachings, if followed, [would] produce the promised result." That contention was not reached by the court of appeals, which upheld the Commission's decision solely on the basis of petitioner's repeated technical broadcasting violations.

In any event, the contention is without merit. The Commission (Pet. App. 7b):

> agree[d] with [petitioner] that the truth of a sincerely held religious belief may not be questioned. There are, however, limits on the activities which may be carried on in the name of religion, and it is well settled that conduct which is in violation of social duties or law may be prohibited.

The Commission concluded (Pet. App. 14b-15b; footnotes omitted):

> [O]fferings of "roots," "incense" and "spiritual baths" constituted false advertising. * * * [R]epresentations which accompanied the offers of these articles, were without religious or factual basis. * * * We recognize that it is not within the province of this Commission to question the truth of the professed beliefs of these ministers. We can, however, question the sincerity of those beliefs and of their representations, and * * * we conclude that there is no valid basis, in religion or otherwise, for the claims * * * which accompanied the offers of the "roots," "incense" and "spiritual baths." * * * Based on this record we find that the repeated broadcast offers of "roots," "baths" etc., together with promises of financial blessings and solutions to personal problems were false and misleading, that [petitioner] continually failed to take reasonable measures to protect its listeners from such use of its facilities and that this use of [petitioner's] facilities also mandates the denial of its renewal application.

3. Petitioner's argument that certiorari should be granted because the court of appeals declined to decide the constitutional question that was also presented (Pet. 10-16) is unsound. Constitutional questions should not be decided unless it is necessary to do so. *Rescue Army* v. *Municipal Court*, 331 U.S. 549, 568-573. See also *Hayburn's Case*, 2 Dall. 409; *Spector Motor Co.* v. *McLaughlin*, 323 U.S. 101, 105.

Therefore, since the court of appeals concluded that the Commission's action could be upheld solely on the basis of petitioner's noncompliance with technical requirements, it was not required to reach the constitutional question tendered unless the assertedly religious nature of petitioner's broadcasts somehow excused it from compliance with technical requirements. That is plainly not the law (see *e.g., Prince* v. *Massachusetts,* 321 U.S. 158), and petitioner does not argue that it is.

Beyond this, however, petitioner's claim (Pet. 19) that the Commission's action was "a pretext for the exercise of control over the content of religious programming" is baseless. The Commission found—and indeed petitioner conceded —that three-digit "scripture citations" which were offered for sale over petitioner's facilities were in fact intended to be used, and were used, by purchasers in illegal "numbers" lotteries (Pet. App. 4b-5b). And, as noted above, the Commission also found that various advertisements for "roots," "incense" and "spiritual baths" were false and misleading (Pet. App. 14b-16b). Both of these findings—as well as the findings of noncompliance with technical requirements—were based on substantial evidence (Pet. App. 11d-49d, 56d-92d).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 1978.

DOJ-1978-01